Four necessary elements of self-defense must be satisfied for the defendant to be justified in using deadly force under the Act. § 16-11-450.

1) The defendant must be without fault in bringing on the difficulty. *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984).

2) The defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. *Id*.

3) A reasonably prudent man of ordinary firmness and courage would have entertained the same belief of imminent danger. *Id*.

4) The defendant must have had no other probable means of avoiding the danger than to act as he did in this particular instance. (If the defendant was on his own premises, he would have no duty to retreat before acting.) *Id*.

Section 16-11-440(A) establishes a presumption of reasonable fear of imminent peril or death so as to satisfy element no. 2 of self-defense if certain circumstances are met. § 16-11-440(A). The presumption applies if:

1) "[T]he person…against whom the deadly force is used is in the process of unlawfully and forcefully *entering*…a dwelling[or] residence." § 16-11-440(A)(1) (emphasis added).
2) "[The person] who uses deadly force knows or has reason to believe that an unlawful and forcible *entry* or unlawful and forcible *act* is occurring or has occurred." § 16-11-440(A)(2) (emphasis added).

However, the presumption established in Subsection A does not apply if the person:

1) "[A]gainst whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, residence, or occupied vehicle including, but not limited to, an owner, lessee, or titleholder." § 16-11-440(B)(1).
2) "[W]ho uses deadly force is engaged in an unlawful activity or is using the dwelling, residence, or occupied vehicle to further an unlawful activity." § 16-11-440(B)(3).

In interpreting Subsection 16-11-440(A), the Supreme Court held that a victim must be "in the process of unlawfully and forcefully entering a dwelling or residence [as] a prerequisite that clearly must be met before the presumption applies." *State v. Scott*, 424 S.C. 463, 474, 819 S.E.2d 116, 121 (2018) (internal quotation marks omitted). Victim was not in the process of entering or trespassing in Defendant's home because he was a lawful guest.

Subsection C states that "[a] person who is not engaged in an unlawful activity and who is attacked in another place *where he has a right to be* . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself." § 16-11-440(C) (emphasis added).

Defendant was not engaged in any illegal activity at the time of the incident. That fact alone, however, does not preclude the existence of a reasonable fear of danger. Therefore, Subsection A does not apply, and Defendant is defaulted in Subsection C. *Curry*, 406 S.C. at 370, 752 S.E.2d at 266 ("Because [Victim] was a social guest and rightfully in the apartment, subsection (A) is inapplicable to Appellant, and he is therefore defaulted into subsection (C), which deals with the use of force by one who is attacked in another place where he has a right to be.").

Defendant was without fault in bringing on the difficulty because the altercation arose from Victim antagonizing Defendant over Defendant's supposed failure to take care of Victim's dog. Victim was known to carry a gun, and Defendant had personally seen and handled that gun in the past; Defendant also knew that Victim had the gun on his person that day. This suffices to establish that Defendant had an actual and reasonable belief that he was in imminent danger of being attacked with a deadly weapon under Subsection C. Finally, Defendant had no other means of avoiding the altercation because Victim was directly in front of him and was actively reaching for his gun that was stashed in his chair. Defendant had to strike Victim twice in order to escape, which ultimately resulted in Victim's death. Defendant was fully entitled to use such lethal force under the Act.

III. Analysis

A. Without Fault in Bringing on Difficulty

The first element of self-defense requires that the defendant is without fault in bringing on the difficulty. Defendant was without fault in this instance, and was similarly without fault in all previous arguments he and Victim had engaged in, which were numerous.

> In *State v. Amburgey*, this Court stated . . . [t]he rule has long been established in this State that evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant, or if directed against others, were so closely connected in point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm.

State v. Brown, 321 S.C. 184, 187, 467 S.E.2d 922, 923–24 (1996) (citing *Amburgey*, 206 S.C. 426, 429, 34 S.E.2d 779, 780 (1945)).

Defendant's former girlfriend testified that the week prior to the fatal incident, Victim had threatened to shoot and kill both of them. This was a pattern of behavior that extended over the several months that Victim was using Defendant's home as a hub for drug dealing.

"A person has the right to act on appearances, even if the person's belief is ultimately mistaken." *State v. Fuller*, 297 S.C. 440, 443–44, 377 S.E.2d 328, 331 (1989). In *Fuller*, "Petitioner testified he did not see what [Victim] was reaching for when he [Petitioner] fired the shots, but because [Victim] continued advancing after seeing the gun, Petitioner believed he was reaching for a deadly weapon." *Id.* at 501, 716 S.E.2d at 102. Similarly here, "[t]here is uncontroverted testimony that [Defendant] acted upon the appearance that [Victim] had a deadly weapon," and indeed that weapon was found by Defendant under Victim's body. *Id.* at 502, 716 S.E.2d at 102.

B. Reasonable Fear of Imminent Peril

Defendant satisfied the second element of self-defense because he had a reasonable fear that Victim would shoot him after Victim assaulted him verbally and threatened him.

Defendant does not fall within 16-11-440(A)'s presumption of reasonable fear, which only applies "if the person … against whom the deadly force is used is in the process of unlawfully and forcefully *entering*, or has unlawfully and forcibly entered a dwelling." § 16-11-440(A)(1) (emphasis added). All parties admit that Victim was a social guest in Defendant's house, not a trespasser.

Section B states that "[t]he presumption provided in subsection (A) does not apply if the person . . . against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling . . . including, but not limited to, an owner, lessee, or titleholder." § 16-11-

440(B)(1); *State v. Jones*, 416 S.C. 283, 292, 786 S.E.2d 132, 137 (2016) ("[T]he presumption of subsection A does not apply if Victim has an equal right to be in the dwelling.") (citing *Curry*, 406 S.C. at 370, 752 S.E.2d at 266). At no point in time was Victim a party to the lease, nor did he pay rent.

In South Carolina, courts have used various factors to determine if a party has a possessory or legal interest in a property as a lessee, including "whether he was an overnight guest at the home," "whether he kept a change of clothes at the home," "whether he engaged in typical domestic activities at the home, or whether he treated it as a commercial establishment," or "whether he paid rent." *State v. Robinson*, 410 S.C. 519, 528–30, 765 S.E.2d 564, 569–70 (2014). Numerous parties have said that Victim primarily used [ADDRESS] as a venue for drug-dealing. Defendant said that Victim never spent the night and would "leave and change clothes and come back." The landlord of the property stated that he would never have allowed Victim to be on the lease and that he would rather the property stand empty than rent to him. Victim does not fit the definition of a lessee or a person with legal interest in the [ADDRESS] property, nor was he attempting to enter the property at the time of the incident as he was already invited inside as a guest. As such, only Subsection C of the Act applies.

In *Jones*, the defendant got into a physical altercation with her boyfriend at the apartment they both shared. He attacked her violently multiple times, before she grabbed a knife as protection while she was trying to get out of the apartment. He grabbed her one last time before she escaped, so she stabbed him once in the chest. In that case, as here, "there [was] no dispute that [Victim] had an equal right to be in the apartment. . . . Thus, as recognized by this Court in *Curry*, Jones was defaulted into seeking immunity under subsection (C), which deals with the use of force by one who is attacked in another place where he has a right to be." *Jones*, 416 S.C.

at 292, 786 S.E.2d at 137. Similarly in *Grantham*, the Court held "that under the circumstances related here, both living in the home . . . the law imposes no duty upon one to retreat in order to avoid the other, but may stand his, or her, ground if without fault in bringing on the difficulty." *State v. Grantham*, 224 S.C. 41, 45–46, 77 S.E.2d 291, 293 (1953).

Subsection C states that "[a] person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary." § 16-11-440(C). Defendant had a clear right to be in the home, and he was not engaged in any unlawful activity. Victim instigated the incident, and as such, under Subsection C, Defendant was justified in using reactive force to the threat of Victim's gun and had no duty to retreat because he had a reasonable fear of imminent peril. Any man of reasonable firmness would similarly have believed himself to be in imminent danger if a known drug dealer were constantly threatening to shoot him, regularly carried a gun on his person, and was in the process of reaching for that gun.

C. No Other Probable Means of Avoiding Danger

"A defendant is not required to retreat if he has 'no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in [the] particular instance.'" *State v. Dickey*, 394 S.C. 491, 502, 716 S.E.2d 97, 102 (2011) (citing *Wiggins*, 330 S.C. at 545, 500 S.E.2d at 493)).

In *Dickey*, Petitioner was a security guard at an apartment building who was trying to oust two drunk and aggressive men from the premises. *Id.* at 502, 716 S.E.2d at 103. Petitioner was found "not to be at fault in bringing on the harm" because at least one of the men had "the

clear intent to assault him and . . . was undeterred at the sight of Petitioner's gun." *Id.* Petitioner was unable to turn his back without being attacked from behind and had no others means of escape, *id.*, so he was entitled to shoot and kill Victim in self-defense. *Id.* at 503, 716 S.E.2d at 103.

Defendant had been repeatedly threatened by Victim for months on end. Defendant had taken to carrying a baseball bat around with him in order to both protect himself from Victim and from any others who might attempt to break into his house, which was a reasonable fear given Victim's use of the house for drug-dealing. At the moment of the fatal altercation, Victim was in the process of reaching for his gun. "Once the right to fire in self-defense arises, a defendant is not required to wait until his adversary is on equal terms or until he has fired or aimed his weapon in order to act." *State v. Starnes*, 340 S.C. 312, 322, 531 S.E.2d 907, 913 (2000). Defendant had no other means at hand to protect himself from being shot other than to incapacitate Victim with the bat before Victim had time to pull the gun. As in *Dickey*, if Defendant had turned his back to run away, Victim easily would have shot him in the back from a close range.

IV. Conclusion

The exhibits and the law are clear that Defendant has satisfied all four elements of self-defense and is thus qualified for immunity from prosecution under South Carolina law. Defendant was the sole lessee for [ADDRESS], and Victim was a guest with no legal interest in the property, as a lessee or otherwise. Defendant was without fault in bringing on the altercation, and Victim's threats towards Defendant had been escalating over the weeks. Defendant credibly and reasonably believed that he was in imminent danger of being shot when Victim threatened to

kill him and got up to reach for his gun that was stashed inside his chair. Any reasonable person would have thought the same, and numerous other parties who knew Victim spoke to the same fear that they held of him. The Act is clear that within his own home, Defendant had the right to react with force, including deadly force, in order to protect himself. The Court must find that Defendant is immune from prosecution under the Act for this charge.

Applicant Details

First Name	**Michelle**
Last Name	**Wolk**
Citizenship Status	**U. S. Citizen**
Email Address	**mwolk@umich.edu**
Address	**Address** Street **6 Weeping Cherry Lane** City **Commack** State/Territory **New York** Zip **11725** Country **United States**
Contact Phone Number	**5165805162**

Applicant Education

BA/BS From	**George Washington University**
Date of BA/BS	**January 2021**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 3, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Michigan Law Review** **Michigan Journal of Gender & Law**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Henry M. Campbell Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Fischer, Harriet
harriet.fischer@cwlc.org
323-951-9276

Litman, Leah
lmlitman@umich.edu
734-647-0549

Kornblatt, Kerry
kkorn@umich.edu

Deacon, Daniel
deacond@umich.edu
734-764-5571

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Michelle Wolk

6 Weeping Cherry Lane, Commack, NY 11725
516.580.5162 • MWolk@umich.edu

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker,

I am a rising third-year student at the University of Michigan Law School, and I am writing to apply for a clerkship in your chambers for your next available term. I am particularly excited about the opportunity to learn from your experience not only as a judge, but also as a public servant, as I am committed to a public interest career.

From starting my own business at age eleven to financing my own undergraduate education, I have always understood the value of hard work. To afford my undergraduate tuition, I worked part-time as an Associate at Springboard Enterprises, an organization dedicated to supporting women entrepreneurs. This job allowed me to pursue my passion for women's rights while working collaboratively with others, and I was proud to exceed some of the organization's goals while I was there. Before I joined the team, Springboard had never achieved its target for the number of articles they wanted to include in a blog column. Under my tenure, their target was not just reached, but doubled.

Because I was financing my own higher education, I worked hard and took extra credits to graduate a semester early. Springboard then hired me into a full-time position as Women's Health Program Manager, a position I held until I started law school.

I came to law school to continue this work, and I have. My work experiences and activities have allowed me to center civil rights and access to justice and develop my legal skills. I earned honors in my legal research and writing class, received the award for best preliminary respondent brief in the Campbell Moot Court competition, and was selected to serve as an Articles Editor for the *Michigan Law Review*. Given the opportunity, it would be my honor to bring my skills, my hard work, and my passion to your chambers.

I have attached my resume, law school transcript, and a writing sample for your review. Letters of recommendation from the following individuals are also attached:

- Professor Leah Litman: lmlitman@umich.edu, (734) 647-0549
- Professor Daniel Deacon: deacond@umich.edu, (734) 764-5571
- Professor Kerry Kornblatt: kkorn@umich.edu, (734) 647-8595
- Harriet Fischer: harriet.fischer@cwlc.org, (323) 951-9276

Thank you for your time and consideration. I look forward to hearing from you.

Warmest Regards,

Michelle Wolk

Michelle Wolk

6 Weeping Cherry Lane, Commack, NY 11725
516.580.5162 • MWolk@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor, GPA: 3.938 (historically top 3%) — Expected May 2024
Journals: *Michigan Law Review* (Articles Editor)
Michigan Journal of Gender and Law (Student Scholarship Editor)
Moot Court: Campbell Moot Court (Quarter-Finalist & Best Preliminary Respondent Brief)
Honors: Dean's Scholarship Recipient
Certificate of Merit for Contracts (highest grade in course)
Research: Research Assistant for Professor Litman (researching abortion and statutory interpretation)
Activities: Women's Law Students Association (Programming Chair)
Peer Tutor
Women Also Know Law
Pro Bono: Civil Rights Litigation Clearinghouse (Project Manager)

GEORGE WASHINGTON UNIVERSITY, COLUMBIAN COLLEGE OF ARTS AND SCIENCES — Washington, DC
Bachelor of Arts in Political Science and Minor in Law & Society, *summa cum laude* — January 2021
Honors: Presidential Academic Scholarship Recipient & John A. Morgan Prize Recipient
Activities: No Lost Generation; University Honors Program; Phi Alpha Delta
Publication: "Title VII's Minimum Threshold Has a Maximum Impact . . ." *Columbia Undergraduate Law Review*

EXPERIENCE

CENTER FOR REPRODUCTIVE RIGHTS — Washington, DC
United States Federal Policy Law Intern — June 2023 – August 2023

WOMEN LAWYERS ON GUARD — Virtual
Intern — September 2022 – Present
- Write comments on agency regulations, including Section 1557 of the ACA and abortion care for veterans
- Identify cases in which Women Lawyers On Guard should join or lead an amicus brief

PLANNED PARENTHOOD FEDERATION OF AMERICA — Virtual
Litigation and Law Extern, Policy Team — January 2023 – April 2023
- Drafted memos about constitutional and statutory issues regarding crisis pregnancy centers
- Analyzed state codes and newly introduced bills to identify model language and assessed new feasible claims and avenues for protecting access to reproductive healthcare
- Participated in weekly team strategy meetings to discuss and explore possible litigation opportunities

CALIFORNIA WOMEN'S LAW CENTER (CWLC) — El Segundo, CA
Legal Intern — May 2022 – July 2022
- Drafted white paper on telehealth procedures, depublication request for California Court of Appeal opinion, and support letters to the California legislature on bills that would expand abortion access
- Developed training materials about Title IX and gender equity in sports for qualified legal service providers
- Conducted data analysis about crisis pregnancy centers
- Evaluated schools for Title IX compliance with respect to the rights of pregnant and parenting students

SPRINGBOARD ENTERPRISES — Washington, DC
Women's Health Program Manager — January 2021 – July 2021
- Lobbied Congress on women's health issues by creating a legislative agenda, reaching out to constituents, meeting with congressional staffers, organizing a congressional briefing, and leading a coalition

Associate — September 2019 – December 2020
- Moderated a blog column by requesting and copyediting posts, publishing articles, and promoting content

ADDITIONAL

Volunteer: Save the Children Sponsor & Pen-Pal (2006 – Present), Associazione Interculturale Universo (2019)
Interests: Yoga, extensive travel to over 20 countries across 3 continents, Disney history

Control No: E196724201 Issue Date: 05/31/2023 Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Wolk,Michelle
Student#: 43423310

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021	**(August 30, 2021 To December 17, 2021)**							
LAW	510	002	Civil Procedure	Richard Friedman	4.00	4.00	4.00	A-
LAW	530	001	Criminal Law	JJ Prescott	4.00	4.00	4.00	A
LAW	580	002	Torts	Sherman Clark	4.00	4.00	4.00	A-
LAW	593	008	Legal Practice Skills I	Kerry Kornblatt	2.00		2.00	H
LAW	598	008	Legal Pract:Writing & Analysis	Kerry Kornblatt	1.00		1.00	H
Term Total				**GPA: 3.800**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.800**		**12.00**	**15.00**	
Winter 2022	**(January 12, 2022 To May 05, 2022)**							
LAW	520	002	Contracts	Gabriel Rauterberg	4.00	4.00	4.00	A+
LAW	540	001	Introduction to Constitutional Law	Leah Litman	4.00	4.00	4.00	B+
LAW	594	008	Legal Practice Skills II	Kerry Kornblatt	2.00		2.00	H
LAW	737	001	Higher Education Law	Jack Bernard	4.00	4.00	4.00	A
Term Total				**GPA: 3.866**	**14.00**	**12.00**	**14.00**	
Cumulative Total				**GPA: 3.833**		**24.00**	**29.00**	

Continued next page >

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Wolk,Michelle
Student#: 43423310

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2022			**(August 29, 2022 To December 16, 2022)**					
LAW	569	001	Legislation and Regulation	Daniel Deacon	4.00	4.00	4.00	A
LAW	781	001	FDA Law	Ralph Hall	3.00	3.00	3.00	A
LAW	803	001	Advocacy for Underdogs	Andrew Buchsbaum	2.00	2.00	2.00	A
LAW	828	001	Social Justice and the Law	Michelle Crockett	2.00	2.00	2.00	A
LAW	885	004	Mini-Seminar Lawyering While Female	Bridgette Carr Chavi Nana	1.00		1.00	S
LAW	992	492	Research: Special Projects Civil Rights Litigation Clearinghouse	Tessa Bialek	3.00	3.00	3.00	A
Term Total				**GPA: 4.000**	**15.00**	**14.00**	**15.00**	
Cumulative Total				**GPA: 3.894**		**38.00**	**44.00**	
Winter 2023			**(January 11, 2023 To May 04, 2023)**					
LAW	404	001	SexualOrien/GenderID & the Law	Maureen Carroll	2.00	2.00	2.00	A
LAW	669	001	Evidence	Sherman Clark	3.00	3.00	3.00	A
LAW	807	001	Civil Rights Litigation	Nakisha Chaney	3.00	3.00	3.00	A+
LAW	990	005	Part-Time Externship	Amy Sankaran	3.00		3.00	S
LAW	991	801	Part-Time Externship Seminar	Amy Sankaran	1.00	1.00	1.00	A
LAW	992	492	Research: Special Projects Civil Rights Litigation Clearinghouse	Tessa Bialek	3.00	3.00	3.00	A
Term Total				**GPA: 4.075**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.938**		**50.00**	**59.00**	

Continued next page >

Control No: E196724201 Issue Date: 05/31/2023 Page 3

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Wolk,Michelle
Student#: 43423310

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2023	**(August 28, 2023 To December 15, 2023)**							
Elections as of:	05/31/2023							
LAW	641	001	Crim Just: Invest&Police Prac	Ekow Yankah	4.00			
LAW	653	001	Employment Discrimination	Zachary Fasman	4.00			
LAW	685	001	Design Fulfilling Life in Law	Bridgette Carr Vivek Sankaran	2.00			
LAW	901	001	Civil Rights Litig Initiative	Michael Steinberg	5.00			

End of Transcript
Total Number of Pages 3

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University of Michigan Law School
Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

Harriet Fischer
California Women's Law Center
360 North Pacific Coast Highway, Suite 2070
El Segundo, CA 90245
323-951-1041 / harriet.fischer@cwlc.org

May 1, 2023

Dear Judge,

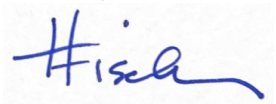
I am writing to enthusiastically recommend Michelle Wolk for a clerkship in your court.

Michelle is one of the best interns I have ever had the pleasure of supervising — she is bright, engaged, and a genuinely lovely person. In summer of 2022, Michelle was an intern at the California Women's Law Center, and I was constantly delighted by the quality of her work, her research and writing skills, her fluency with the issues at hand, and her flexibility of mind. Among other projects, Michelle drafted a white paper on telehealth in California, analyzing its status, its impact on women's health and reproductive access, and suggesting improvements to benefit women across the social spectrum. Her writing was clear and concise, her use of sources and citations impeccable, and she showed a thorough command of the issues along with a mature appreciation for her audience. Apart from the excellent paper she produced, I appreciated how eager she was for constructive input throughout the process and her receptivity to suggestions and comments from myself and others to improve her work. At the risk of sounding cliché, she is an absolute pleasure to work with.

Michelle seems to excel at everything she does, which is all the more remarkable considering the many things she is doing at any given time. She accepted assignments readily, volunteered to help whenever anyone was the least bit overburdened, and always went the extra mile because she is forward-thinking and anticipates the needs of the project and team as she works. While many students say they come to law school to make the world a better place, as a second-career attorney who was myself committed to public interest from the beginning, I am quite certain Michelle's passion for making a difference runs deep and is very, very real. In her quest to become the best attorney she can be, she has set her sights on a clerkship to further build her already-impressive skillset and add immeasurably to her experience and understanding of the legal landscape.

I am confident Michelle will be an asset to any judicial chambers. I recommend her without reservation and hope you have the opportunity to work with and mentor this delightful, impressive, and promising young woman. Please do not hesitate to contact me if you need any additional information.

Sincerely,



Harriet Fischer
Staff Attorney

University of Michigan
Law School

Leah Litman
Professor of Law

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I'm delighted to write this letter of recommendation for Michelle Wolk, who has applied for a clerkship in your chambers. Michelle is one of the two best research assistants I have ever had, and I think she is going to be a terrific law clerk. She's naturally gifted at legal analysis but also an extremely hard worker. She's supremely easy to work with – professional, organized, and upbeat. I really hope you give her application close consideration; I think you will really enjoy working with her.

I'll start with Michelle's work as a research assistant, since I've worked with her on several different projects and she has done superb work on all of them– and it's the kind of work she would be doing in chambers. (I also taught Michelle in the first-year constitutional law class, which I will describe more below.)

Because of her interest in reproductive rights and justice, Michelle asked me to let her know about any research assistant opportunities that might be related to that topic. And so, in winter 2022, I asked her to work with me on amicus briefs for the Michigan House and Senate Democrats in the pre-*Dobbs* challenge to Michigan's pre-*Roe* criminal abortion ban. The work was difficult and demanding—it happened on an extremely condensed timeline (which happened to be during the *Law Review* write-on competition); and it required her to look into state constitutional history.

Michelle put together a memo within a week, and basically all of it went directly into the brief. I was honestly a little taken aback at just how good her work product was – it's well written; it's comprehensive; it's organized and methodical; and it's just plain smart. She was able to draw specific connections between the drafting history of the Michigan Constitution and language in different U.S. Supreme Court opinions about the nature of unenumerated rights and the method for determining them.

Michelle's work was so good that I began asking her whether she had any interest and time whenever I had reproductive justice-related work that summer and fall. And there was a lot of it. In addition to the first amicus brief, Michelle assisted me on a second amicus brief in the early summer; congressional testimony over the summer; a white paper on the Michigan constitutional amendment related to reproductive rights and justice in the fall; and an amicus brief in the fall about the state Board of Canvassers' certification of the reproductive justice amendment. Most of those projects, like the first one, required extremely quick timelines—the first amicus brief was on a *week*-long briefing schedule; the final amicus brief had to be put together over a holiday weekend. And every single time, Michelle managed to find the time to put together absolutely first-rate work – and again, on every single dimension. She's a strong, clear writer; she's really good at research; and she's just really smart and good at law. (The projects involved a mix of federal and state law; legislative history and constitutional convention records research; and a ton of case law/doctrinal work.)

She's so good that, by the time of the amicus brief that had a turnaround time of a weekend, I basically told the people who asked me to do it that I wanted to check to see whether Michelle was available to help before I could commit to doing the brief!

As that description suggests, I think the absolute world of Michelle's legal research and writing skills, as well as her analytical capabilities. She is easily one of the two best research assistants I have ever had in almost a decade as an academic at a variety of institutions (including Harvard, Stanford, and University of California, Irvine).

On more qualitative dimensions, Michelle is equally impressive. She is *really* professional despite being on the younger end of the spectrum for law students at Michigan. Michelle graduated early from college and began a full-time job at the organization where she had been working part time throughout college. It's obvious to me that she can juggle a ton on her plate. It's also clear that she's really gifted at legal analysis, because it's not like she's pulling a GPA that lands her around the top ten students in the class or doing all of this research for me because she's only doing those things. She did all of the research work for me while also gaining election to the Law Review and having responsibilities (beginning the second semester of her first year) on the *Michigan Journal of Gender and Law*. She is involved in a ton of activities at the law school. And having worked with her on programming and activities related to her role in the Women Law Student's Association, Women Also Know Law, as well as other organizations, I can attest to the fact that she seems to do all of those things well too. I think she must work like a beast to get everything done; at a minimum, it's clear she has excellent time management skills and a monster work ethic.

Michelle is also obviously well-liked by her peers. She's been selected for leadership roles in both journals and student organizations. She effectively supervised the other research assistants that helped me with the white paper on the Michigan constitutional amendment.

Leah Litman - lmlitman@umich.edu - 734-647-0549

As I noted earlier in the letter, I got to know Michelle when she was a student in my first-year constitutional law class. Michelle's class participation and interim assignment were top notch. (In addition to a final exam, I give students an interim assignment. I also call on a large number of students each class, and therefore end up talking to every student about once per week.) Her performance on the exam, however, was not quite as good. But it does not even begin to speak to her potential as a clerk. For one thing, Michelle ended up needing surgery toward the end of the semester, and it's hard to think that didn't end up affecting her exam performance somewhat. But more importantly, I've seen example after example of how Michelle does the kind of work that happens in chambers – legal research and writing and analysis that's not limited to a 4-hour exam. And when it comes to that, she's really great at it. Nothing in her exam evinced even the slightest misstep or misunderstanding. She just ended up with a middling grade because she didn't write enough about all of the issues. Plus, her grade in that class (mine) has been the aberration – since then she's earned all As and A+s.

I think Michelle will be a terrific law clerk, and I would hire her in a second. I served as a law clerk for two years after graduating, once on the U.S. Court of Appeals for the Sixth Circuit and once on the U.S. Supreme Court, and I am completely confident that Michelle has what it takes to succeed as a law clerk.

I would be delighted to speak with you further about her application. You can reach me by email (lmlitman@umich.edu), or by phone (my work phone is 734-647-0549, and my cell phone, which is probably a better bet, is 202-374-3231).

Thank you for considering Michelle's application.

Sincerely,

Leah Litman

UNIVERSITY OF MICHIGAN LAW
Legal Practice Program
801 Monroe Street, 945 Legal Research
Ann Arbor, Michigan 48109-1210

Kerry Kornblatt
Clinical Assistant Professor of Law

May 30, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Michelle Wolk's clerkship application. Michelle was a student in my year-long Legal Practice class, which is Michigan's 1L legal research and writing course. I know Michelle's legal writing well and I am in a good position to speak to that and her other substantial strengths.

Michelle is a standout student—she was one of the top few students in my 20-person class and received a "high pass" in my class. (The class is graded on a modified pass/fail system; I am permitted to give a "high pass" to the four top-scoring students.) Although Michelle's work was strong from the beginning, her dedication to building her skills was evident. In her major first-semester assignment (the research memo), she scored in the top few in the class. Second semester, her major writing assignment (the trial brief) tied for the highest score in the class.

Before writing this letter, I reviewed Michelle's writing to confirm my memory of it. Michelle is an impressive legal writer. She has truly standout research skills. (In the trial brief assignment, she was able to find some on-point cases that her peers had not.) Her analysis is impressively thorough, and the final product is polished and proofread to a degree that I very rarely see in my students' work. In short, she was displaying law-clerk-level writing by the end of her 1L year. Her focus on developing her research and writing skills has clearly not let up after her time in my class. I was not at all surprised to learn that her brief writing was singled out for an award in the law school's competitive in-house moot court competition.

In addition to her standout qualities as a legal writer, Michelle is the kind of person who would bring added value to a judicial chambers. One look at her resume reveals that she is someone who is at the core of a few different areas of our law school community. As I know from interacting with her in some of those roles, she's skilled at working with a wide range of people. She's organized. She's professional.

For these reasons, I'm confident that Michelle will make a great clerk and I'm happy to recommend her. If I may be of any further assistance, please feel free to contact me.

Sincerely,

/Kerry Kornblatt/

Kerry Kornblatt
Clinical Assistant Professor of Law

MICHIGAN LAW
UNIVERSITY OF MICHIGAN
625 South State Street
Ann Arbor, Michigan 48109-1215

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend Michelle Wolk for a clerkship in your chambers. Michelle was a student of mine in Legislation and Regulation and is also serving as the principal editor of an article I am publishing with the Michigan Law Review. Michelle is extremely bright and a hard worker. I believe she will be an excellent clerk.

I first got to know Michelle when she was a student in my Fall 2022 Legislation and Regulation class. Michelle was a quiet student, but she performed very well when called on to answer questions. I could tell that she always came well prepared, having thoroughly thought through the issues before coming to class. And she showed a deftness with the doctrine that few students possess. Students like Michelle make my job in the classroom a lot easier.

Michelle wrote the second-highest scoring exam in her Leg Reg class, and she was very close to having written the best. My Fall 2022 exam was hard (indeed, in retrospect, I think it was probably too hard). But Michelle's answers stood out for their consistency and for Michelle's ability to cut to the heart of the matter. Michelle did particularly well on the final question of the exam, which involved an EPA determination to withdraw its decision to regulate a certain chemical. It was a difficult statutory interpretation question that pitted agencies' inherent power to change their minds against various statutory clues suggesting that once the EPA determined to regulate a chemical it had to follow through with that decision by promulgating binding regulations, at least for the five-year period following the determination. Michelle's answer hit all the bases—she discussed various canons of interpretation, the role of Chevron, and explored the possible absurdity that would arise from requiring the EPA to regulate a chemical it no longer felt posed a health threat. It represented, like the rest of Michelle's exam, a masterful job.

After Michelle was my student in Leg Reg, I had the opportunity to publish with the Michigan Law Review, where Michelle serves as an articles editor, and I was delighted when Michelle was assigned to be the editor on my piece. Publishing with a journal at your home institution is a bit tricky, and I told the editors that we were partners in the endeavor and that they shouldn't shy away from giving me edits where they felt things could be improved. I've now received one round of edits from Michelle, and they were of consistently high quality. She improved the writing of the piece as well as pushed me to clarify and make crisper certain claims I make in the article. As a former clerk myself I know that editing is an important part of the job, and I think Michelle will be very capable in that role.

In preparation for writing this letter I took a look at Michelle's writing sample, which is a brief she wrote for our Campbell Moot Court Competition. I was heavily involved in advising the students putting together this year's Campbell question, and I know the issues well. Michelle's brief is, in my view, quite strong. It clearly lays out the law and her client's position. It fits the pieces together nicely (something that was particularly difficult to do on the Seventh Amendment question). Each paragraph begins with a forceful but not over-the-top sentence designed to guide the reader along to the conclusion. Michelle is a very nice writer.

Michelle has a strong academic track record at Michigan Law, where she has taken a mix of courses that include both bread-and-butter subjects and some that are targeted to her particular interests. And Michelle has achieved that record while being a genuine leader among her cohort, serving in many different types of roles on journals and in student organizations, acting as a tutor, and giving her time to pro bono projects. Michelle has a longstanding interest in using the law to make the world a better place, and she is devoted to a career in public interest. I know that given Michelle's skills she will continue to succeed in whatever she chooses to pursue.

In sum, I recommend Michelle highly. Please let me know if I can be of any additional help. My email address is deacond@umich.edu, and my cellphone is (646) 943-3566. My office line, which is in the footer, works as well. I appreciate you considering Michelle for a clerkship.

Sincerely,

Daniel Deacon

Michelle Wolk

6 Weeping Cherry Lane, Commack, NY 11725
516.580.5162 • MWolk@umich.edu

Writing Sample

I prepared this brief for the quarter-final round of the 98th Henry M. Campbell Moot Court Competition. I was assigned to write the brief on behalf of the petitioner. This brief is self-edited, and has not been edited by anyone else.

IN THE

Supreme Court of the United States

No. 22-0096

H. B. SUTHERLAND BANK, N.A.,
Petitioner,

v.

CONSUMER FINANCIAL PROTECTION BUREAU,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TWELFTH CIRCUIT

BRIEF FOR PETITIONER

Michelle Wolk
Counsel of Record

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

Constitutional Provisions

STATEMENT OF THE CASE

A. Introduction

Petitioner H.B. Sutherland Bank, N.A. was denied its constitutionally mandated day in court. Instead, the Consumer Financial Protection Bureau played the role of judge, jury, and executioner, punishing Sutherland unilaterally. *H.B. Sutherland Bank, N.A. v. Consumer Fin. Prot. Bureau*, 505 F.4th 1, 2 (12th Cir. 2022). In so doing, the CFPB was acting pursuant to the Consumer Financial Protection Act of 2010. *Id.* at 4-5. In passing the CFPA, Congress infringed on the rights of those it is supposed to protect by creating a body that circumvents the constitutional safeguards designed to uphold due process and promote separation of powers. This encroachment cannot go unchecked.

First, Sutherland has a Seventh Amendment right to a jury trial because this case is analogous to the common-law claim of fraud and the relief sought here was legal, not equitable. The public rights exception does not mandate a different outcome, since this case is a matter of private rights, and even if it weren't, the exception does not apply to this case. Second, the dual-layer removal restrictions on the administrative law judge violate the separation-of-powers doctrine because they prevent the President from ensuring the laws are faithfully executed. In asking the Court to find otherwise, the CFPB deprives Sutherland of fair adjudication of its rights, deprives the American people of their constitutional right to serve on juries, deprives the President of his ability to take care that the laws are faithfully executed, and deprives the public of a democratically accountable figure for decisions pertaining to consumer protection.

B. Statement of Facts

An established financial institution, Sutherland serves more than 11 million customers in the United States across 3,250 locations throughout the country. *Id.* at 3. Sutherland and its

subsidiaries provide retail banking, stock brokerage, insurance, and wealth management services to customers nationwide. *Id.* at 2-3. Sutherland is a registered national bank chartered and regulated by the Office of the Comptroller of the Currency. *Id.* at 3.

Created by Congress, the CFPB is an independent regulatory agency tasked with enforcing broad consumer protection provisions, including eighteen pre-existing statutes that regulate home finance, student loans, credit cards, and banking practices as well as a new prohibition on unfair, deceptive, or abusive acts and practices in the consumer-finance sector. *Id.* The CFPB was charged with "extensive" power to conduct investigations, issue subpoenas and civil investigative demands, initiative administrative adjudications, bring civil suits in federal court, and issue binding and enforceable decisions in administrative proceedings. *Id.* The Bureau has obtained billions in relief in the form of restitution, disgorgement, and civil penalties. *Id.* The Bureau is also authorized to provide injunctive relief. *Id.* The CFPB is led by a single Director, removable at the President's will, and a singular ALJ presides over the Bureau's adjudicative matters. *Id.* at 4. The ALJ is removable only for "good cause" by the Merit Systems Protection Board and MSPB members are removable by the President only for "inefficiency, neglect of duty, or malfeasance in office." *Id.*

C. Procedural History

In 2019, the CFPB initiated proceedings against Sutherland. *Id.* The merits of those proceedings are not on dispute. *Id.* After oral argument, the ALJ issued a Recommended Decision, consisting of both legal and factual findings. *Id.* The ALJ recommended that Sutherland be held liable for economic damages as well as a civil penalty in the amount of $4,155,500. *Id.* at 4-5. Additionally, the ALJ recommended Sutherland be enjoined from offering a particular service to customers. *Id.* at 5. Sutherland appealed the decision to the Bureau's Director, who subsequently upheld each of the ALJ's findings, including the penalties. *Id.* At every stage of the appeal,

Sutherland raised the constitutional claims at issue here. *Id.* Sutherland filed a motion with the Director to stay her Final Order, which was denied. *Id.*

Sutherland filed a petition in the United States Court of Appeals for the Twelfth Circuit seeking to set aside the Director's order. *Id.* at 5. A divided panel of the Twelfth Circuit affirmed the Director's order. Sutherland petitioned the Court for a rehearing en banc, which was granted. Upon the rehearing, the Twelfth Circuit again found for the CFPB. Sutherland then filed a petition for writ of certiorari to the Supreme Court of the United States, which was granted.

DISCUSSION

I. PETITIONER IS ENTITLED TO A SEVENTH AMENDMENT TRIAL BY JURY

The right to a trial by jury "[i]n Suits at common law" is embedded in the United States Constitution as a cornerstone of our democracy. U.S. Const. amend. VII. For nearly two centuries, this Court has recognized that the trial by jury is "justly dear to the American people" and that "every encroachment upon it [should be] watched with great jealousy." *Parsons v. Bedford*, 28 U.S. 433, 446 (1830). Even if jury trials "impede swift resolution of [the] proceedings and increase the expense," such considerations are "insufficient to overcome the clear command of the Seventh Amendment." *Granfinanciera v. Nordberg*, 492 U.S. 33, 63-64 (quoting *Curtis v. Loether*, 415 U.S. 189, 198 (1974)). Simply, efficiency does not supersede constitutional rights. Here, Sutherland's rights were unjustly encroached. Sutherland was denied its day in court, and correspondingly, its trial by jury, in violation of the Seventh Amendment.

A. This Action is Sufficiently Analogous to a Suit at Common Law

The Seventh Amendment applies to any action analogous to suits brought in English law courts in 1791, and such an analogy is present here. *Parsons*, 28 U.S. at 447. Under the traditional test, courts determine whether a statutory action is analogous by examining the nature

of the action and the remedy sought. *Tull v. United States*, 481 U.S. 412, 417 (1987). In conducting this analysis, courts should recognize the fundamental nature of the right to trial by jury, and thus the analogy "should be liberally construed." *Granfinanciera*, 492 U.S. at 48 (quoting *Schoenthal v. Irving Trust Co.*, 287 U.S. 92, 94 (1932)).

Applying such a liberal construction here, the unfair, deceptive or abusive acts and practices claim is closely analogous to common-law fraud. Both actions share several core elements, including materiality, reliance, omission or misrepresentation, and injury. *Sutherland*, 505 F. 4th at 26 (Cartwright, J., concurring). The Twelfth Circuit majority did not meaningfully apply this *Tull* test, skipping straight to the public rights exception. The concurrence, however, did apply the test, and concluded that there was no common law analog, because common-law fraud required intent and there is no intent requirement found within the cause of action at issue here. *Id.* at 24 (Cartwright, J., concurring). Nevertheless, whether the actions are identical or perfectly analogous is irrelevant. *Pernell v. Southhall Realty*, 416 U.S. 363, 375 (1974). Indeed, what matters is whether the subject matter or "essential function" of the action was "unheard of at common law," not whether every single detail or element aligns. *Id.*; *Tull*, 481 U.S. at 421. No one disputes that fraud existed at common law.

Additionally, other courts have recognized that claims similar to the unfair, deceptive, or abusive acts and practices (UDAAP) prohibition are analogous to common-law fraud. *See Full Spectrum Software, Inc. v. Forte Automation Sys.*, 858 F.3d 666, 676 (1st Cir. 2017). There, the First Circuit evaluated a Massachusetts statute that prohibited "unfair or deceptive" practices and concluded that a claim for "deceptive" conduct was analogous to common-law fraud, deceit, or misrepresentation. *Id.* Because the deceptive part was analogous, the Court said the Seventh Amendment encompassed the claim, regardless of whether a claim for "unfair" conduct was also

analogous. *Id.* Importantly, this means that even if intent were required in order to find an analog, the UDAAP claim would *still* be analogous to a claim at common-law. This is because the intent requirement is implicit in the CFPA's prohibition of "deceptive" activities. *Sutherland*, 505 F.4th at 31 (Bernhard, J., dissenting). Therefore, even though the listed definitions for "unfair" or "abusive" do not include an intent element, because deception is analogous, the entire claim would be analogous.

Furthermore, the nature of the action can be ascertained through an examination of the "nature of the underlying relationship between the parties." *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 568 (1990). Here, the relationship in question is between a bank and its customers. Banks existed at common law too, and in fact, there was a "clear jurisprudential shift during the eighteenth century" in the approach towards fraud due to the fact that society was becoming "increasingly commercialised." Cerian Charlotte Griffiths, *Prosecuting Fraud in the Metropolis*, *1760-1820*, Univ. of Liverpool 3 (September 2017), https://livrepository.liverpool.ac.uk/3012313/1/201042524_Sep2017.pdf. Even if the scope of the deceptive practice here is larger than the scope of deception seen at common law, the nature of the relationship is the same. Therefore, the UDAAP claim is sufficiently analogous to a claim at common law.

Moreover, the second part of the *Tull* test, characterizing the relief sought, is "more important" than whether the statutory action is precisely analogous to the common-law action. 481 U.S. at 420. Here, the relief consisted of monetary damages, a $4.1 million civil penalty, and an injunction. Courts have consistently held that monetary damages are legal relief, not equitable. *See, e.g.*, *Curtis v. Loether*, 415 U.S. 189, 197 (1974); *Terry*, 494 U.S. at 570-71. Similarly, courts have adamantly concluded that civil penalties are legal remedies. *Tull*, 481 U.S.

at 422. The *Tull* court held that the civil penalty there was legal, especially because it was not calculated solely on the basis of equitable restitutionary determinations, such as the profits gained from statutory violations, but simply imposed a maximum penalty of $10,000 per day of violation for purposes of retribution and deterrence. *Id.* at 422-23. Similarly, the CFPB can seek civil penalties of up to $1 million for each day that a violation occurs. 12 U.S.C. § 5565(c)(2)(C).

The Twelfth Circuit suggested that the civil penalty could not be a legal remedy, because it would render the money damages remedy redundant and statutes should be interpreted to avoid redundancy, if possible. *Sutherland*, 505 F.4th at 28 (Cartwright, J., concurring); *Gustafson v. Alloy Co.*, 513 U.S. 561, 574 (1995). However, the two remedies can both be legal without invoking redundancy concerns. The CFPB itself explains that there are key differences between the remedies, including "the link between who pays the money and who receives the money." *Civil Penalty Fund*, CONSUMER FIN. PROT. BUREAU, https://www.consumerfinance.gov/enforcement/payments-harmed-consumers/civil-penalty-fund/ (last visited Dec. 23, 2022). Therefore, the primary forms of relief here, the monetary damages, and civil penalty, were both legal, and the injunctive relief was merely incidental to those other forms of relief. *Tull*, 481 U.S. at 424-25. As such, the relief sought renders this case analogous to one at common law.

B. The Public Rights Exception Does Not Apply to This Action

Under the public rights exception, Congress can fashion causes of action that are closely analogous to common-law claims and place them beyond the domain of the Seventh Amendment by assigning their resolution to a forum in which jury trials are unavailable. *Granfinanciera*, 492 U.S. at 52. This exception is normally invoked when analyzing whether Article III, rather than the Seventh Amendment, limits administrative adjudications. *Sutherland*, 505 F.4th at 7 n.2.

Even assuming that it would be appropriate to invoke the exception with respect to these Seventh Amendment considerations, this case is not about adjudicating public rights, rendering the exception inapplicable.

Just because the government is a party to this matter does not automatically render the matter a "public right." *Jarkesy v. SEC*, 34 F.4th 446, 457-58 (5th Cir. 2022). "The identity of the parties alone" does not determine the requirements of Article III. *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 587 (1985). Just as in *Jarkesy*, where the matter was a private right since the hedge funds defrauded particular investors, here the bank was accused of defrauding particular customers. 34 F.4th at 458. This is not a matter intertwined with the performance of the functions of the executive department; rather, the CFPB is standing in for private plaintiffs. *Sutherland*, 505 F.4th at 34 (Bernhard, J., dissenting). Moreover, this is a case of private rights, because in addition to fraud, UDAAP can be analogized to misrepresentation. *See Full Spectrum Software, Inc.*, 858 F.3d at 676. Misrepresentation is "a classical tort action." *In re Evangelist*, 760 F.2d 27, 32 (1st Cir. 1985). The public rights exception doesn't apply to wholly tort actions. *Granfinanciera*, 492 U.S. at 51.

While the identity of the parties is not determinative, key attributes of the parties can impact whether a case is a public right. *Commodity Futures Trading Com. v. Schor*, 478 U.S. 833, 854 (1986). For example, whether the parties *choose* to invoke agency adjudication is relevant to whether the public rights exception applies. *Id.* Giving the parties a choice protects the jurisdiction of the federal judiciary, mitigating the separations of power concern otherwise associated with the public rights doctrine. *Id.* In *Schor*, both parties were willing to proceed via agency adjudication; the same cannot be said here. *Id.*

Additionally, the public rights exception extends only to cases that "arise between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments." *Crowell v. Benson*, 285 U.S. 22, 50 (1932). This means that it applies to matters which historically have been determined *exclusively* by the executive or legislative branches. *Stern v. Marshall*, 564 U.S. 462, 485 (2011). As such, the public rights exception allows Congress to devise "novel" causes of action free from the confines of the Seventh Amendment. *Granfinanciera*, 492 U.S. at 51. The matters adjudicated by the CFPB have not historically been left to branches other than the judiciary, and they are certainly not novel. The CFPB enforces eighteen pre-existing statutes, which prior to its creation, were litigated in the judiciary. *Sutherland*, 505 F.4th at 3. Aside from the pre-existing statutes, the CFPB does also enforce the prohibition on unfair, deceptive, or abusive acts and practices, but as previously explained, that claim is so analogous to common-law fraud that it can hardly be considered "novel." Because Congress has taken these cases that have traditionally been tried in Article III courts and authorized a non-Article III forum of its own creation to decide them, "[t]he risk that Congress may improperly have encroached on the federal judiciary is obviously magnified." *Schor*, 478 U.S. at 854 (quoting *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856)).

Furthermore, Congress may assign the adjudication of public rights to an administrative agency if a jury trial would be "incompatible" with the statutory scheme. *Atlas Roofing v. OSHRC*, 430 U.S. 442, 455 (1977). Expounding on that, the public rights exception applies to cases in which "resolution of the claim by an expert Government agency is deemed *essential* to a limited regulatory objective within the agency's authority." *Stern*, 564 U.S. at 490 (emphasis added). Resolution of the claims by an administrative agency is certainly not essential to the

regulatory objective; if it were, Congress would not have also authorized the government to bring these claims before Article III courts. 12 U.S.C. § 5564. Since the statutory scheme itself authorizes the agency to bring enforcement actions in Article III courts, jury trials are not "incompatible" with the statutory scheme, and thus, would not "dismantle the statutory scheme." *Jarkesy*, 34 F.4th at 455.

Therefore, because there is a common law analog, and because the public rights exception does not apply, the Seventh Amendment applies, meaning Sutherland was unconstitutionally denied its right to a jury trial.

II. THE ADMINISTRATIVE LAW JUDGE REMOVAL SCHEME IS UNCONSTITUTIONAL AND CONTRAVENES THE SEPARARATION OF POWERS DOCTRINE

This Court has emphatically and routinely recognized the fundamental nature of the President's power to remove those who wield executive power on his behalf. *See Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2191-92 (2020). The ALJ wields executive power, and therefore, the removal restrictions on the ALJ contravene the separation of powers doctrine. While it is true that the nature of the ALJ's role is quasi-judicial, this Court has recognized time and time again that executive officers may exercise "duties of a quasi-judicial character," and that when that happens, the President must retain the ability to remove that official at will. *See Myers v. United States*, 272 U.S. 52, 135 (1926). Otherwise, the President cannot "discharge his own constitutional duty of seeing that the laws be faithfully executed." *Id.* As an example, since 1804, the President has had the power to remove territorial judges at will, just as if they were executive officers. *Id.* at 155. This Court has upheld such exercises of the removal power, concluding that although the President may not remove Article III judges, he does indeed maintain his removal power when it comes to other judicial actors, such as territorial

judges. *Id.* at 155-57. Therefore, the quasi-judicial nature of the ALJ's role does not mean that the ALJ is not still wielding executive power.

Indeed, the ALJ does wield significant executive power. The Bureau's ALJ adjudicates matters and issues recommended decisions, consisting of both legal and factual findings. *Sutherland*, 505 F.4th at 4. Through these recommended decisions, the ALJ often serves executive functions by incorporating policy considerations into the decision. *See, e.g.*, Charles H. Koch, Jr., *Policymaking by the Administrative Judiciary*, 56 ALA. L. REV. 693, 694 (2005). Furthermore, there's no requirement that the Director substantively review these recommended decisions before signing off on them. 12 C.F.R. § 1081.402 (2022). If neither party appeals the matter, the Director is instructed to issue a final decision or to order further briefing, but the Director is not statutorily required to even read the recommended decision before making it final. *Id.* Thusly, the ALJ wields executive power.

However, regardless of whether the ALJ's role is of a judicial or executive nature is largely irrelevant. The separation of powers doctrine does not turn on the nature of an officer's functions. In recent cases, this Court has made clear that questions of removal do not hinge on whether the office is primarily considered to be executive, judicial, or legislative in nature. *See, e.g.*, *Collins v. Yellen*, 141 S. Ct. 1761, 1784 (2021) (emphasizing that the nature of an agency's authority is not dispositive in answering questions of removal, because the separation of powers doctrine is implicated whenever an agency does "important work," regardless of that agency's role). Therefore, the President must have sole and illimitable removal power, unless one of two very specific exceptions apply. *Seila*, 140 S. Ct. at 2192.

The first exception, which very clearly does not apply here, is that Congress can create expert agencies led by a group of principal officers removable by the President only for good

cause. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). Here, the CFPB employs only one ALJ, so this is certainly not a matter of a group of officers. *Sutherland*, 505 F.4th at 37 (Bernhard, J., dissenting). Furthermore, this Court has already made clear that ALJs are inferior officers. *Lucia v. SEC*, 138 S. Ct. 2044 (2018). As such, both parties fully admit that the ALJ is an inferior officer, not a principal one. *Sutherland*, 505 F.4th at 15. Because this Court has declined to extend this exception to different configurations of officers, it is apparent that *Humphrey's Executor* cannot save the removal restrictions here. *Seila*, 140 S. Ct. at 2192.

A. The *Morrison* Exception Does Not Apply Because the Removal Restriction Unduly Trammels the President's Power

The second exception is also inapplicable here. While Congress may provide tenure protections to certain inferior officers with narrowly defined duties, the ALJ does not have such narrowly defined duties. *Morrison v. Olson*, 487 U.S. 654 (1988). Ultimately, there is no bright-line test for determining whether an officer's duties are sufficiently narrow, so the true question is whether the removal restriction "unduly trammels on executive authority." *Id.* at 691. Here, the removal restriction undoubtedly does. The President has a constitutional duty to "take care that the laws be faithfully executed." U.S. Const. art. II, § 3. His ability to do that here is "impermissibly burden[ed]." *Morrison*, 487 U.S. at 692.

The *Morrison* exception is more likely to apply if the officer has limited jurisdiction. *Id.* at 691. In *Morrison*, the officer at issue had limited jurisdiction, because she was only allowed to investigate certain federal officials for certain serious federal crimes, and only within the scope of jurisdiction granted to her by the Special Division pursuant to the request by the Attorney General. *Id.* at 672. The ALJ's jurisdiction, on the other hand, is much broader. Yes, the ALJ can only hear cases that the government chooses to bring before the adjudicative forum, but the Bureau can conduct adjudication proceedings with respect to "*any* person." 12 U.S.C. § 5563

(emphasis added). Unlike the independent counsel in *Morrison* who could only investigate certain officials, the Bureau can therefore investigate anyone. Additionally, the *Morrison* independent counsel could only investigate certain serious federal crimes, whereas the Bureau is allowed to enforce compliance with the Consumer Financial Protection Act of 2010 as well as other federal laws. *Id.* Importantly, the CFPA authorizes enforcement of eighteen federal consumer protection statutes, including provisions on home finance, student loans, credit cards, and banking practices. *Sutherland*, 505 F.4th at 3. There is no requirement that the Bureau only enforce these provisions in "serious" cases, and the breadth of these statutes demonstrates that the Bureau, and correspondingly, the ALJ has quite extensive jurisdiction. This is further demonstrated by the fact that the ALJ essentially has complete discretion and "all powers necessary" to conduct these proceedings. 12 C.F.R. § 1081.104 (2022).

Furthermore, the *Morrison* exception is also more likely to apply if the officer has limited tenure. *Morrison*, 487 U.S. at 691. In *Morrison*, the independent counsel's tenure was limited by the "temporary" nature of the office, given that the office was to be terminated when the officer's single task was accomplished. *Id.* at 672. Here, on the other hand, the ALJ's tenure is not limited whatsoever. 5 U.S.C. § 7521. The ALJ's job is not complete at the conclusion of a single adjudication. Rather, the ALJ's job is continuous and ongoing. Therefore, it cannot be said that the ALJ has a limited tenure.

This Court has also previously weighed the authority wielded by the officer and other practical considerations in determining whether the *Morrison* exception should apply. *Morrison*, 487 U.S. at 691, 695-96. As previously discussed, the ALJ does indeed wield significant policymaking and administrative authority, making it less likely that the *Morrison* exception applies. Furthermore, other practical considerations warrant the same conclusion. For example,

this Court has emphatically shuddered at the thought of vesting significant power in a single non-democratically accountable individual. *See, e.g.*, *Seila*, 140 S. Ct. at 2203. That is exactly what has happened here. Whereas most administrative agencies have multiple ALJs, the CFPB, in contrast, only has one. *ALJs by Agency*, U.S. OFF. OF PERS. MGMT., https://www.opm.gov/services-for-agencies/administrative-law-judges/#url=ALJs-by-Agency (last visited Dec. 22, 2022).

Ultimately, the ALJ's broad jurisdiction, unlimited tenure, and significant authority coupled with other practical considerations make the case here very different from *Morrison*. Because this Court has previously refused to broaden the existing exceptions to situations not completely analogous, it is apparent that *Seila* is applicable here, and the President must have illimitable removal control. *Seila*, 140 S. Ct. at 2192. Without it, the President's ability to take care that the laws are faithfully executed will be unduly trammeled.

B. The Dual-Layer-For-Cause Removal Structure is Unconstitutional

Additionally, the removal scheme further unduly trammels the President's power due to its dual-layer-for-cause structure. *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010). In *Free Enterprise Fund*, this Court struck down dual-layer-for-cause removal schemes, concluding that granting an officer executive power without the Executive's oversight "subverts the President's ability to ensure that the laws are faithfully executed--as well as the public's ability to pass judgment on his efforts." 561 U.S. at 498. There, the government argued that the Board was required for its expertise and that the structure should therefore be allowed in order to create a "workable government." *Id.* In response, this Court made clear that efficiency, convenience, and functionality cannot save a scheme contrary to the Constitution. *Id.* Nevertheless, the Twelfth Circuit upheld the adjudicative structure here based, in part, on those

same values. *Sutherland,* 505 F.4th at 12. The Twelfth Circuit also upheld the removal scheme, in part, because the Director can modify or set aside the ALJ's conclusions, and the Director is removable at the President's will. *Id.* at 19. However, this Court has rejected that argument as well, concluding that broad power over the office's function is not equivalent to the power to remove the officer. *Free Enter. Fund,* 561 U.S. at 504.

Importantly, ALJs fall in the contours of the *Free Enterprise Fund* holding as they are "Officers of the United States" who exercise significant authority. 561 U.S. at 506; *Lucia*, 138 S. Ct. at 2055. The *Free Enterprise Fund* court noted, in dicta, that its holding did not address the "subset of independent agency *employees* who serve as administrative law judges." 561 U.S. at 507 n.10 (emphasis added). This exclusion was because at the time, it was disputed as to whether ALJs were "Officers of the United States" or employees. *Id.* However, since *Free Enterprise Fund* was decided, this Court has very explicitly resolved that dispute and concluded that ALJs are indeed officers. *Lucia*, 138 S. Ct. at 2055. Therefore, the logic of *Free Enterprise Fund* should undoubtedly extend to ALJs as well.

If the dual-layer removal scheme were allowed to stand, the President would not be able to take action if the ALJ goes rogue and issues decisions inconsistent with the President's policy agenda. If the CFPB Director allows the ALJ's decisions to go into effect, the President's only option would be to fire the Director, but the ALJ would remain in her role. If the CFPB Director consistently overrules the ALJ's decisions because of such issues, then CFPB decisions would no longer be impartial and insulated from presidential policy — one of the key reasons to have the ALJ structure in the first place. *Sutherland*, 505 F.4th at 17. If the President wants the ALJ to be removed, at least two layers of for-cause protection stand in the President's way. *Jarkesy*, 34 F.4th at 465. Plus, according to the Twelfth Circuit, the ALJ cannot be removed for failure to

follow policy choices. *Sutherland,* 505 F.4th at 18-19. Such a situation could easily cause great embarrassment to the President. *Myers*, 272 U.S. at 121. Thus, to ensure that the President can take care that the laws are faithfully executed, this dual-layer removal scheme cannot stand.

CONCLUSION

Sutherland asks this Court to protect the American people from government overreach and to ensure that constitutional rights remain intact. To do so, the Court should recognize three key principles. First, the Seventh Amendment applies to claims with a common-law analog, which exists here. Second, the public rights exception does not apply to private rights nor to cases where the statutory scheme is indeed compatible with a jury trial. Third, dual-layer for-cause removal schemes unduly trammel the President's power and are unconstitutional. By reversing the Twelfth Circuit's opinion, this Court will preserve constitutional rights and ensure that everyone has access to their constitutionally mandated day in court.

Applicant Details

First Name	**David**
Middle Initial	**B**
Last Name	**Woodlief**
Citizenship Status	**U. S. Citizen**
Email Address	**dburnsw@live.unc.edu**
Address	**Address** Street **1521 E Franklin St, Apt C-104** City **Chapel Hill** State/Territory **North Carolina** Zip **27514** Country **United States**
Contact Phone Number	**3365014303**

Applicant Education

BA/BS From	**University of North Carolina-Chapel Hill**
Date of BA/BS	**May 2021**
JD/LLB From	**University of North Carolina School of Law** **https://law.unc.edu/**
Date of JD/LLB	**May 12, 2024**
Class Rank	**5%**
Law Review/Journal	**Yes**
Journal(s)	**First Amendment Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Holderness Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Everett, Luke
lmeveret@email.unc.edu
Ervin, Samuel
erj@sc.nccourts.org
9198315711
Hessick, Andrew
ahessick@email.unc.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

David B. Woodlief

dburnsw@live.unc.edu | (336) 501-4303
Permanent: 1826 Crossroads Dr. | Greensboro, NC 27455
Current: 1521 E. Franklin St. Apt. C-104 | Chapel Hill, NC 27514

12 June 2023

The Honorable Jamar K. Walker
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third -year law student at the University of North Carolina School of Law, where I am currently ranked 9th out of 213 students, and am writing to apply for the position as your law clerk beginning in August of 2024.

My past experiences have prepared me well for the work in your chambers. As an intern last summer to Justices Ervin and Berger, I had the opportunity to develop my research and writing skills while drafting memoranda for petitions for discretionary review, bench briefs, and opinions. This past Fall, I had the opportunity to practice those skills in my Appellate Advocacy course, Moot Court, and UNC's Supreme Court Program. Through the Supreme Court Program and as a Research Assistant to Professor Hessick, I helped draft an Amicus Brief in *Moore v. Harper* (No. 21-1271), defending the decision on the merits and urging the US Supreme Court to reject the Independent State Legislature Theory on Federalism grounds, and a petition for writ of certiorari in *Lomax v. United States* (No. 22-644), urging the court to reconsider deference to the commentary on the United States Sentencing Guidelines in light of recent precedent. In addition, I was able to familiarize myself with class action practice and multi-district litigation through my Complex Civil Litigation class and am enrolled in Federal Jurisdiction in the Fall of 2023.

Attached are my resume, unofficial transcript, writing sample, and recommendations. Thank you for your time and consideration.

Sincerely,

David Woodlief

DAVID WOODLIEF

(336) 501-4303 | dburnsw@live.unc.edu | 1826 Crossroads Dr., Greensboro, NC 27455

EDUCATION

University of North Carolina School of Law, Chapel Hill, NC
Juris Doctor, expected May 2024
GPA: 3.916 (Rank 9/213), Merit Scholarship Recipient

- Articles Editor, *First Amendment Law Review*, Vol. 22; Staff Member, Vol. 21
- Holderness Moot Court Appellate Advocacy Team, Fall 2022-Current
- Vice President, Christian Legal Society, Fall 2022-Spring 2023
- Treasurer, Christian Legal Society, Spring 2022
- Eugene Gressman & Daniel H Pollitt Oral Advocacy Award, Spring 2022

University of North Carolina, Chapel Hill, NC
Bachelor of Arts in Economics and Political Science, Minor: Religious Studies, May 2021
GPA: 3.815, with Highest Distinction; Phi Beta Kappa

- Pi Sigma Alpha (Political Science Honor Society)
- Staff Writer, *Carolina Political Review*, political and legal issues journal

EXPERIENCE

Phelps Dunbar, LLP, Raleigh, NC
Summer Associate, July-August 2023

Alston & Bird, LLP, Raleigh, NC
Summer Associate, May-June 2023

Professor F. Andrew Hessick, University of North Carolina School of Law, Chapel Hill, NC
Research Assistant, Spring 2022

- Aided in preparing the petition for writ of certiorari in *United States v. Lomax*, 22-644
- Performed general research tasks

Hon. Phil Berger, Jr., Associate Justice, North Carolina Supreme Court, Raleigh, NC
Judicial Intern, June-July 2022

- Prepared bench briefs, a memo outlining the merits of a habeas petition, and an opinion
- First place in joint Supreme Court-Court of Appeals Moot Court Competition

Hon. Samuel J. Ervin, IV, Associate Justice, North Carolina Supreme Court, Raleigh, NC
Judicial Intern, May-June 2022

- Prepared memos outlining the merits of petitions for discretionary review and a bench brief
- Participated in the drafting of an opinion
- Discussed cases with Justice Ervin and clerks; observed oral arguments

Hon. L. Patrick Auld, Magistrate Judge, U.S. District Court (M.D.N.C.), Greensboro, NC
Shadowing, July 2021

- Researched the CDC eviction moratorium
- Observed court before Judge Auld and U.S. District Court Judges the Hon. Catherine C. Eagles, the Hon. N. Carlton Tilley, Jr., and the Hon. William L. Osteen, Jr.

LANGUAGES, & INTERESTS

Languages: Low/Intermediate proficiency in Dutch, elementary proficiency in Biblical Hebrew and Sahidic Coptic
Interests: Fantasy and thriller fiction; a variety of podcasts; model building; Eagle Scout Troop 103

UNC SCHOOL OF LAW

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL
SCHOOL OF LAW

O 919-962-5106 | F 919-962-1170

Van Hecke-Wettach Hall | Campus Box 3380
160 Ridge Road | Chapel Hill, NC 27599-3380
law.unc.edu

Unofficial Transcript

Note to Employers from the Career Development Office: Grades at the UNC School of Law are awarded in the form of letters (A, A-, B+, B-, C, etc.). Each letter grade is associated with a number (A = 4.0, A- = 3.7, B+ = 3.3, B = 3.0, etc.) for purposes of calculating a cumulative GPA. An A+ may be awarded in exceptional situations. For more information on the grading system, including the current class rank cutoffs, please contact the Career Development Office at (919) 962-8102 or visit our website at https://law.unc.edu/careers/for-employers/grading-policy-faq/

Student Name: David Woodlief

Cumulative GPA: 3.916

Course	Description	Term	Grade	Units
LAW 426	COMPLEX CIVIL LITIGATION	2023 Spring	A	3.00
LAW 335	ADV TORTS: BUS TORTS/PROD LIAB	2023 Spring	A	3.00
LAW 242	EVIDENCE	2023 Spring	A	4.00
LAW 228	BUSI ASSOCIATIONS	2023 Spring	A	4.00
LAW 563	APPELLATE ADV. COMPETITION LAB	2023 Spring	PS	1.00
LAW 234F	FIRST AMENDMENT	2022 Fall	A	3.00
LAW 336	APPELLATE ADVOCACY	2022 Fall	A	3.00
LAW 311	SUPREME COURT PROGRAM	2022 Fall	A	3.00
LAW 266	PROF RESPONSIBILITY	2022 Fall	A	2.00
LAW 275	SECURED TRANSACTIONS	2022 Fall	A	3.00
LAW 234A	CONSTITUTIONAL LAW	2022 Spring	A	4.00
LAW 296	RES,REAS,WRIT,ADVOC II	2022 Spring	A	3.00
LAW 205	CRIMINAL LAW	2022 Spring	A	4.00
LAW 207	PROPERTY	2022 Spring	A-	4.00

LAW 204	CONTRACTS	2021 Fall	A	4.00
LAW 201	CIVIL PROCEDURE	2021 Fall	A	4.00
LAW 295	RES,REAS,WRIT,ADVOC I	2021 Fall	A-	3.00
LAW 209	TORTS	2021 Fall	B+	4.00

GPA Calculation		
Total Grade Points	56.000	227.100
/ Units Taken Toward GPA	14.000	58.000
= GPA	**4.000**	**3.916**

ID 730234485 David Woodlief

Internal Unofficial Transcript - UNC Chapel Hill

Name : David Woodlief

Student ID: 730234485

Print Date : 2023-06-01

- - - - - Degrees Awarded - - - - -

Degree : Bachelor of Arts

Confer Date : 2021-05-16

Degree Honors : Highest Distinction

Plan : College of Arts and Sciences

Economics

Plan : Political Science

Plan : Religious Studies

- - - - - Transfer Credits - - - - -

Transfer Credit from Guilford College

Applied Toward AS Bachelor Program

2018 Fall

ECON	----	ECON GENERAL ELECTIVE	4.00	4.00 TR
ECON	----	ECON GENERAL ELECTIVE	4.00	4.00 TR
ECON	----	ECON GENERAL ELECTIVE	1.00	1.00 TR
ECON	100	ECONOMIC PRINCIPLES	3.00	0.00 TR
ENGL	----	ENGL GENERAL ELECTIVE	4.00	4.00 TR
ENGL	----	ENGL GENERAL ELECTIVE	1.00	1.00 TR
ENGL	146	SCIFI/FANTASY/UTOPIA	3.00	3.00 TR
GENR	----	GENR GENERAL ELECTIVE	4.00	4.00 TR

GENR	----	GENR GENERAL ELECTIVE	4.00	4.00 TR
GENR	----	GENR GENERAL ELECTIVE	4.00	4.00 TR
GENR	101	COMMUNICATION INTENSIVE GEN ED	4.00	4.00 TR
GENR	103	EXPERIENTIAL EDUCATION GEN ED	4.00	4.00 TR
MUSC	----	MUSC GENERAL ELECTIVE	1.00	1.00 TR
MUSC	143	INTRO TO ROCK MUSIC	3.00	3.00 TR
PHYS	104	GENERAL PHYSICS I	4.00	4.00 TR
PHYS	105	GENERAL PHYSICS II	4.00	4.00 TR
POLI	----	POLI GENERAL ELECTIVE	1.00	1.00 TR
POLI	----	POLI GENERAL ELECTIVE	1.00	1.00 TR
POLI	----	POLI GENERAL ELECTIVE	1.00	1.00 TR
POLI	100	INTRO TO GOVT IN US	3.00	0.00 TR
POLI	130	INTRO TO COMP POLI	3.00	3.00 TR
POLI	276	MAJ ISS POL THEORY	3.00	3.00 TR

Course Trans GPA: 0.000 Transfer Totals : 64.00 58.00 0.000

- - - - - Test Credits - - - - -

Test Credits Applied Toward AS Bachelor Program

2018 Fall

ECON	100	ECONOMIC PRINCIPLES	3.00	3.00 BE
ECON	100	ECONOMIC PRINCIPLES		0.00 BE
ECON	100	ECONOMIC PRINCIPLES		0.00 BE
ECON	101	ECON: INTRO	3.00	3.00 BE
ENEC	202	ENVIRONMENTAL SCIENCE	4.00	4.00 BE
ENGL	110	CREDIT FOR AP ENGL LANG TEST	3.00	3.00 BE
HIST	----	HIST GENERAL ELECTIVE	3.00	3.00 BE
HIST	128	AM HIST SINCE 1865	3.00	3.00 BE
MATH	110P	ALGEBRA		0.00 BE
MATH	110P	ALGEBRA		0.00 BE

MATH	110P	ALGEBRA		0.00	BE
MATH	110P	ALGEBRA		0.00	BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
MATH	129P	PRECALCULUS MATHEMATICS		0.00	BE
MATH	231	CALC FUNC ONE VAR I	4.00	4.00	BE
MATH	231	CALC FUNC ONE VAR I		0.00	BE
MATH	232	CAL FUNC ONE VAR II	4.00	4.00	BE
POLI	100	INTRO TO GOVT IN US	3.00	3.00	BE
STOR	155	INTRO DATA MODELS & INFERENCE	3.00	3.00	BE

Test Trans GPA: 0.000 Transfer Totals : 33.00 33.00 0.000

- - - - - **Academic Program History** - - - - -

Program : AS Bachelor

2018-04-23 : Active in Program

2018-04-23 : Economics (BA) Major

2018-09-05 : Active in Program

2018-09-05 : Economics (BA) Major

2018-09-05 : Political Science Second Major

Program : AS Bachelor of Arts

2019-08-20 : Active in Program

2019-08-20 : Economics (BA) Major

2019-08-20 : Political Science Second Major

2019-09-06 : Active in Program

2019-09-06 : Economics (BA) Major

2019-09-06 : Political Science Second Major

2019-09-06 : Religious Studies Minor Minor

- - - - - **Beginning of Undergraduate Record** - - - - -

2018 Fall

DTCH	402	ELEMENTARY DUTCH	3.00	3.00 A		12.000
ECON	410	MICRO THEORY	3.00	3.00 B-		8.100
ENGL	105	ENG COMP & RHETORIC	3.00	3.00 A		12.000
POLI	75	THINKING ABOUT LAW	3.00	3.00 A		12.000
POLI	208	POLIT PART & ELECT	3.00	3.00 A		12.000
	TERM GPA : 3.740	TERM TOTALS :	15.00	15.00		56.100
	CUM GPA : 3.740	CUM TOTALS :	15.00	106.00		56.100
	Dean's List					
	Good Standing					

2019 Spr

DTCH	403	INTERMEDIATE DUTCH	3.00	3.00 A		12.000
ECON	400	STATISTICS AND ECONOMETRICS	3.00	3.00 A-		11.100
ECON	420	IN TH/MONEY INC EMP	3.00	3.00 B		9.000
POLI	150	INTERN REL WRLD POL	3.00	3.00 A		12.000
POLI	490	ADV UND SEMINAR	3.00	3.00 A		12.000
	TERM GPA : 3.740	TERM TOTALS :	15.00	15.00		56.100
	CUM GPA : 3.740	CUM TOTALS :	30.00	121.00		112.200
	Dean's List					
	Good Standing					

2019 Fall

ECON	469	ASIAN EC SYS	3.00	3.00 B		9.000
ECON	480	LABOR ECONOMICS	3.00	3.00 A		12.000
LFIT	109	LIFE FITNESS: RACQUET SP	1.00	1.00 A		4.000
POLI	411	CIVIL LIB IN U S	3.00	3.00 A		12.000
RELI	211	CLASS HEBREW I: LING INTRO HB	3.00	3.00 A		12.000
	TERM GPA : 3.769	TERM TOTALS :	13.00	13.00		49.000
	CUM GPA : 3.749	CUM TOTALS :	43.00	134.00		161.200

Dean's List

Good Standing

2020 Spr

ECON	423	FINANCIAL MARKETS	3.00	3.00	A-	11.100
GERM	101	ELEMENTARY GERMAN	4.00	4.00	A	16.000
RELI	212	CLASS HEBREW II: LING INTRO HB	3.00	3.00	A	12.000
RELI	227	LUTHER AND THE BIBLE	3.00	3.00	A	12.000

TERM GPA : 3.931 TERM TOTALS : 13.00 13.00 51.100

CUM GPA : 3.791 CUM TOTALS : 56.00 147.00 212.300

UNC-CH allowed pass/fail grades in Spring 2020 to accommodate the COVID-19 pandemic impact

UNC-CH suspended Dean's list in Spring 2020 to accommodate the COVID-19 pandemic impact

Good Standing

2020 Sum I

BUSI	106	FINANCIAL ACCOUNTING	3.00	3.00	PS	

TERM GPA : 0.000 TERM TOTALS : 3.00 3.00 0.000

CUM GPA : 3.791 CUM TOTALS : 59.00 150.00 212.300

Good Standing

2020 Fall

DTCH	396	Independent Readings	3.00	3.00	A-	11.100
ECON	580	ADV LABOR ECONOMICS	3.00	3.00	PS	
POLI	202	THE U S SUPREME COURT	3.00	3.00	A	12.000
RELI	515	CULTURAL-HIST NEW TESTAMENT	3.00	3.00	A	12.000

TERM GPA : 3.900 TERM TOTALS : 12.00 12.00 35.100

CUM GPA : 3.806 CUM TOTALS : 71.00 162.00 247.400

UNC-CH allowed pass/fail grades in Fall 2020 to accommodate the COVID-19 pandemic impact

UNC-CH suspended Dean's list in Fall 2020 to accommodate the COVID-19 pandemic impact

Good Standing

2021 Spr

POLI	410	CONSTITUTION OF US	3.00	3.00 PS	
RELI	109	HIST/CUL/ANC ISRAEL	3.00	3.00 PS	
RELI	413	BIBLICAL COPTIC	3.00	3.00 PS	
RELI	454	THE REFORMATION	3.00	3.00 A	12.000

TERM GPA : 4.000 TERM TOTALS : 12.00 12.00 12.000

CUM GPA : 3.815 CUM TOTALS : 83.00 174.00 259.400

UNC-CH suspended Dean's list in Spring 2021 to accommodate the COVID-19 pandemic impact

UNC-CH allowed pass/fail grades in Spring 2021 to accommodate the COVID-19 pandemic impact

Good Standing

Internal Unofficial Transcript - UNC Chapel Hill

Name : David Woodlief

Student ID: 730234485

Print Date : 2023-06-01

- - - - - **Degrees Awarded** - - - - -

Degree : Bachelor of Arts

Confer Date : 2021-05-16

Degree Honors : Highest Distinction

Plan : College of Arts and Sciences

Economics

Plan : Political Science

Plan : Religious Studies

G00679885 David B. Woodlief
Jan 14, 2021 05:28 pm

Academic Transcript

This is not an official transcript. Courses which are in progress may also be included on this transcript.

Transfer Credit Institution Credit Transcript Totals

Transcript Data

STUDENT INFORMATION

Birth Date: Sep 15, 2000
Student Type: Continuing

Curriculum Information

Current Program

***Transcript type:Unofficial is NOT Official ***

TRANSFER CREDIT ACCEPTED BY INSTITUTION -Top-

2015-2016: College Board Adv Placement

Subject	Course	Title	Grade	Credit Hours	Quality Points	R
AP	ENGL	Eng Lang/Comp	T	4.000		0.00
AP	ENVS	Environmental Science	T	4.000		0.00
AP	HIST	U S History	T	4.000		0.00
AP	HIST	World History	T	4.000		0.00
AP	MATH	Calculus AB Subscore	T	4.000		0.00
AP	MATH	Calculus BC	T	4.000		0.00
AP	MATH	Statistics	T	4.000		0.00

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	28.000	28.000	28.000	0.000	0.00	0.00

Unofficial Transcript

INSTITUTION CREDIT -Top-

Term: Fall 2016
Additional Standing: Dean's List Full-time

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
ECON	221	Guilford	UG	Macro:US in World Econ	A	4.000	16.00			
ENGL	151	Guilford	UG	HP:Lit and Hist of the 1920s	A	4.000	16.00			
GST	121	Guilford	UG	Peer Mentor	CR	1.000	0.00			
PHYS	117	Guilford	UG	Physics I	A-	4.000	14.80			
PSCI	101	Guilford	UG	The American Political System	A	4.000	16.00			

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	17.000	17.000	16.000	62.80	3.92
Cumulative:	17.000	17.000	17.000	16.000	62.80	3.92

Unofficial Transcript

Term: Spring 2017

Additional Standing: Dean's List Full-time

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
BUS	215	Guilford	UG	Business Law & Legal Environmt	A	4.000	16.00			
ECON	333	Guilford	UG	Money and Capital Markets	A	4.000	16.00			
PHYS	118	Guilford	UG	Physics II	B	4.000	12.00			
PSCI	105	Guilford	UG	Comparative Politics	A	4.000	16.00			

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	60.00	3.75
Cumulative:	33.000	33.000	33.000	32.000	122.80	3.83

Unofficial Transcript

Term: Fall 2017

Additional Standing: Dean's List Full-time

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
BUS	246	Guilford	UG	International Business	A-	4.000	14.80			
ECON	336	Guilford	UG	Economic & Social Development	B+	4.000	13.20			
ENGL	250	Guilford	UG	Fantasy & Sci Fictn Literature	A	4.000	16.00			
PSCI	106	Guilford	UG	Intro Classics Political Thght	A-	4.000	14.80			

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	58.80	3.67
Cumulative:	49.000	49.000	49.000	48.000	181.60	3.78

Unofficial Transcript

Term: Spring 2018

Additional Standing: Dean's List Full-time

Subject	Course	Campus	Level	Title	Grade	Credit Hours	Quality Points	Start and End Dates	R	CEU Contact Hours
BUS	249	Guilford	UG	Principles of Management	A	4.000	16.00			
ECON	432	Guilford	UG	International Economics	A-	4.000	14.80			
MUS	112	Guilford	UG	Rock Hist:Rock & Roll to Blues	A	4.000	16.00			

PSCI	250	Guilford	UG	Speak Up: Public Forum Debate	A-	4.000	14.80

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	16.000	16.000	16.000	16.000	61.60	3.85
Cumulative:	65.000	65.000	65.000	64.000	243.20	3.80

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) **-Top-**

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	65.000	65.000	65.000	64.000	243.20	3.80
Total Transfer:	28.000	28.000	28.000	0.000	0.00	0.00
Overall:	93.000	93.000	93.000	64.000	243.20	3.80

Unofficial Transcript

RELEASE: 8.7.1

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I understand that my former student David Woodlief is applying for a position in your chambers. I have had the good fortune to teach David twice: as a second semester 1L in my legal research, writing, and advocacy class; and the fall 2022 semester in my upper-level Appellate Advocacy class. He was outstanding in both courses, and he's a delight to know outside of the classroom. I couldn't possibly recommend him more highly.

First, as is immediately evident from his resumé, David excels academically. His GPA puts him very near the top of a class that is, by most metrics, the strongest that UNC Law has produced in the twelve years I've been teaching here. This academic strength has borne itself out in my two classes with David. He got A's in both—one of two students in the legal writing class and one of three in Appellate Ad—and in both, he demonstrated fantastic legal writing skills. But even more than his writing ability, it's David's research that always stands out to me. Of the hundreds of students whom I've taught here at UNC, David is the most curious and interested in the law. Every time I assigned a research assignment, he came back with more law than I had found in preparing the problem. And it was not because he went down unhelpful rabbit holes; he just refused to leave any stone unturned. For instance, in his final brief in Appellate Ad, he found all of the binding Fourth Circuit law; but he also found many more on-point cases from other circuits around the country. Maybe more impressively, he was able to deploy those cases in his brief in a way that I, as a judge, would know that they were non-binding but would still find them relevant and persuasive.

Perhaps because of that curiosity, David is on the short list of best advocates that I've ever taught at UNC. The second-semester 1L legal writing course is an advocacy class, as, of course, is Appellate Ad. Both classes require multiple written briefs and one graded oral argument. Most students struggle—especially as 1Ls—to understand what it means to be persuasive. Not David. He is that incredibly rare student who can argue his position but who could also, at the drop of a hat, turn around and argue the opposing position. To that end, he is absolutely one of the five best oral advocates I've worked with at UNC.

Finally, David would be an excellent addition to any workplace. He gets along with everyone, is a pleasure to talk to, and has a great sense of humor. More than that, I think that David is particularly suited to a judge's chambers. He just cares about the law in a way that very few students do. One final example: when I taught him as a 1L, the class's longest writing assignment was a problem on the Armed Career Criminals Act, and particularly what constitutes "separate occasions" under that statute. In the first session after I assigned the case file, David came up to me and asked, "Did you base this on *U.S. v. Woodson*?" I hadn't, and indeed didn't know anything about *U.S. v. Woodson*, a case dealing with the exact issue from our case file. David informed me that the Supreme Court had just heard arguments on the case the week before, and he had heard about it on a podcast and then read up on the issue. (My memory is that he read the briefs on the case; I can't say for sure that that's true, but the fact that I believe he might have says plenty about David's approach to the law.)

Ultimately, I have taught very few (if any) students who I think are better fits to be in a judge's chambers than David. I am happy to recommend him unreservedly. Please let me know if I can provide any more information for you.

With every good wish, I am

Sincerely,

Luke H. Everett
Clinical Professor
UNC School of Law
Email: lmeveret@email.unc.edu
Cell phone: 919-621-1317

Sam J. Ervin, IV
Associate Justice, Supreme Court of North Carolina (Retired)
517 Lenoir Street
Morganton, North Carolina 28655
Telephone: (828) 455-4134
E-Mail Address: ervingarden@bellsouth.net
March 7, 2023

Re: David Woodlief

Dear Sir or Madam:

I understand that David Woodlief, who is expected to graduate from the University of North Carolina Law School in May 2024, is seeking employment in your chambers. I am writing to you for the purpose of providing you with the benefit of the insights that I developed concerning Mr. Woodlief in the hope that it will assist you in your selection process.

As his resume reflects, Mr. Woodlief served as an unpaid intern in my chambers at the Supreme Court of North Carolina in May and June of 2022. During that time, Mr. Woodlief appears to have participated in the drafting of a portion of an opinion, prepared multiple bench briefs for my use in preparing for oral argument and the casting of a preliminary vote concerning the manner in which the cases in question should be decided, and drafted memoranda discussing the extent to which the Court should grant or deny petitions seeking discretionary review of lower court decisions or other forms of relief in which the assigned justice is required to summarize the facts of the case, the substance of the underlying decision, and the arguments that the parties advanced for and against the allowance of the petition and to make a recommendation concerning the manner in which the petition should be disposed of. During my time at the Supreme Court, my practice was to simply review bench briefs with the clerk or intern who prepared the initial draft and to electronically edit draft opinions or petition memoranda in order to prepare a final version for circulation to the other members of the Court.

During his time in my chambers, Mr. Woodlief appeared to be very interested in the work of the Court, acted in a professional manner, and completed his work assignments quickly. According to one of my former law clerks, Mr. Woodlief had strong research and writing skills and invariably wanted to discuss the cases on which he had worked once they had been orally argued. The other former law clerk who worked with Mr. Woodlief described him as diligent and engaged, as having done quality work, and as having asked good questions when he thought that he needed help. My personal recollection is that the recommendations that Mr. Woodlief provided me with were soundly reasoned and that the draft documents that he prepared for my use could be converted into an opinion or memorandum that could be disseminated to the other members of the Court without an unusual amount of effort on my part. In addition, Mr. Woodlief got along well with me and the other members of my staff, worked hard, and struck me as a serious person with a deep interest in the judicial system who has a bright future in the legal profession. All in all, Mr. Woodlief served effectively in my chambers and we both enjoyed and appreciated having had the benefit of his assistance during the time that he was with us.

Thanks very much for taking these thoughts into consideration. If you have any questions or would like to receive any additional information about Mr. Woodlief, please do not hesitate to let me know.

Sincerely,

Sam J. Ervin, IV

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to recommend David Woodlief for a clerkship in your chambers. Mr. Woodlief will be a top-flight clerk. He is diligent, hardworking, and smart, and he is an excellent writer.

I have had Mr. Woodlief in a number of classes, including Civil Procedure, Evidence, and the Supreme Court program. The first two classes—Civil Procedure and Evidence—are standard lecture classes, and while Mr. Woodlief was excellent in those classes, it was in the Supreme Court program that his talents became apparent. That program entails representing actual clients before the U.S. Supreme Court. The students assist in identifying potential cases in which to seek review, developing litigation strategies, and writing briefs. Mr. Woodlief was outstanding in the class. He quickly grasped the nuances of when a case is cert worthy and how to frame arguments attractive to the Court. More important, his brief writing was excellent; he is a natural.

Mr. Woodlief's outstanding work in the Supreme Court program prompted me to hire him as a research assistant. The principal project on which Mr. Woodlief helped involved identifying various arguments made during the debates at the original Constitutional Convention. As always, his work was top notch. Not only was the work well written and reasoned; the comprehensiveness of the research also demonstrated his tenacity and attention to detail.

Mr. Woodlief will be an outstanding clerk. I unhesitatingly recommend him. If you have any questions, please do not hesitate to call me at (919) 962-4332.

Sincerely,

F. Andrew Hessick

Andrew Hessick - ahessick@email.unc.edu

DAVID WOODLIEF

(336) 501-4303 | dburnsw@live.unc.edu | 1826 Crossroads Dr., Greensboro, NC 27455

This brief is a modified version of the final graded assignment in my Fall 2022 appellate advocacy course. The submitted draft was compliant with the Federal Rules of Appellate Procedure, but only the Statement of the Issues, Statement of the Case, and Argument are included for length. The work is my own and was not substantially edited by others.

The assigned problem was a real case out of the Eastern District of North Carolina which the parties resolved pending appeal. The defendant and his codefendant were spotted late at night in a closed business park by Apex Police, who followed a short distance to a gas station. At the gas station the police spoke with the defendant, took his license, and parked behind his car. During the encounter an officer spotted a machete and the police searched the car, turning up illegally possessed mail. The district court found that the Fourth Amendment was not implicated because the stop was consensual and, if it were not, the officers had reasonable suspicion to seize the defendant. The issue on appeal is whether the defendant was seized and, if so, whether there was reasonable suspicion to support that seizure.

STATEMENT OF THE ISSUES

IA. Whether the trial court erred when it determined Mr. Lane was not seized, finding that a reasonable person would feel free to leave when the police tailed his car, "partially blocked" it, took his license, and discussed in his presence that he was a suspect.

IB. Whether the trial court erred when it determined that the police had reasonable suspicion to seize Mr. Lane where an officer observed him driving at night, without stopping, through a closed business park where the officer was aware of previous criminal activity, and Mr. Lane "accelerated," without committing any traffic violations, such that an officer thought he was "trying to get away," even though he stopped at a gas station shortly thereafter and willingly spoke with the officer.

STATEMENT OF THE CASE

At 12:51 a.m. on a Monday, Corporal Deborah Hansen of the Apex Police department was patrolling the Pinnacle Park area, "a spot where crimes had occurred . . . , making sure nothing happened." (J.A. 42-43) "Being that there was no traffic" and that all the businesses in the area were closed, when she spotted a car "driving slowly" on Pinnacle Park's main roads, Reliance Road and Classic Road, she "thought [she] would follow [the car], see what they were doing." (J.A. 43) The car "didn't pull in any kind of businesses like [it] w[as] looking for anyplace, [it] just drove out of the area towards the stop sign" at Lufkin Road, which is a small road leading back to the main thoroughfares of Ten-Ten Road, East Williams Street, and interchanges for U.S. 1. (J.A. 43-44) Neither of the car's occupants got out of the car, and Corporal Hansen readily acknowledged that she "never saw any illegal activity of any kind." (J.A. 61)

The car turned right, heading back towards Ten-Ten Road and a Sheetz gas station. (J.A. 44) Corporal Hansen wrote in her incident report that when it did so, the driver "accelerated quickly as if he was attempting to get away from [her]." (J.A. 15) At the suppression hearing she testified that she was close enough to "see the taillights of the car," trailing less than two tenths of a mile behind, and "felt like it was obvious that [the driver] had seen [her] because he had been generally going slow and then he quickly took off . . . like he was trying to maybe not be in this area because [she] was there." (J.A. 44, 62) When the car turned, Corporal Hansen was still driving on Classic Road, where the speed limit is twenty-five miles per hour, and she observed the car accelerate from a full stop to the thirty-five mile per hour speed limit on Lufkin Road. (J.A. 60-63) The car never violated any traffic laws, and Corporal Hansen suggested that if it had, by failing to stop at the sign for instance, she would have pulled the car over. (J.A. 62)

After turning, the car drove six-tenths of a mile down Lufkin Road and stopped at the Sheetz just before Ten-Ten Road. (J.A. 45) Her interest piqued, Corporal Hansen "pulled to the very far right of the parking lot . . . so [the car] could back out . . . if [the driver] wanted to" and "called into communications" to advise them of the situation. (J.A. 45) She then intercepted the driver, Jimmy Cecil Lane, Jr., as he walked to the front door of the Sheetz. (J.A. 46) His passenger had already made his way inside. (J.A. 46)

Corporal Hansen called out to him "[d]o you mind if I talk to you?" to which Mr. Lane responded "yeah," before the two walked towards each other and met, "kind of like a mutual joining." (J.A. 46) Corporal Hansen asked him where he and his passenger were from, to which Mr. Lane responded they were from Fayetteville. (J.A. 46) She wrote in her incident report that Mr. Lane said that they were "visiting girls" and testified that he said they were "looking for girls." (J.A. 15, 46, 71-73)

Corporal Hansen then asked Mr. Lane whether he had a valid driver's license. (J.A. 47) Mr. Lane responded that he did, and went to retrieve it, spending "about a minute" looking through the glove box. (J.A. 47) When he remembered he had put it in his wallet, he produced a temporary paper license, which he gave to Corporal Hansen. (J.A. 47)

Almost simultaneously, Officers Ashley Boyd and D. Warren arrived in their marked patrol car. (J.A. 48) Officer Warren parked the car with the nose to the rear of Mr. Lane's with, in Officer Boyd's estimation, "a distance you could walk in between [the] two vehicles." (J.A. 90) According to Officer Boyd, the patrol car "partially blocked" Mr. Lane's car such that "maybe Mr. Lane could have backed up[,] but he would have had to do some maneuvering to do so." (J.A. 97) Corporal Hansen told Officers Warren and Boyd that Mr. Lane's passenger was in the store and told Officer Boyd to "standby with Mr. Lane so [she] could check" Mr. Lane's license. (J.A. 49) She directed Officer Warren to "keep an eye" on the passenger. (J.A. 76)

Corporal Hansen began to walk back to her patrol car, but "then [she] quickly turn[ed] around" and "c[ame] back to [her] fellow officers" to say "this [sic] may be the suspects from the other night." (J.A. 76-77) She then returned to her car to check Mr. Lane's license. (J.A. 49) While she was doing so, Officer Boyd walked back to her car carrying a machete, which he said was concealed in Mr. Lane's car. (J.A. 51)

While the officers discussed whether or not they should arrest Mr. Lane for carrying the machete, Officer Boyd told Corporal Hansen "I don't care either way. It just depends on if you want to have something to take them to jail for." (J.A. 85) Corporal Hansen replied that "the reason I was going to take him to jail was because . . . when he comes here to Apex, he's from Fayetteville, he has no reason to be here, and you know he's stealing. I know that was the description I seen somewhere on the bulletin." (J.A. 86) Officer Boyd mentioned a bulletin that

did not match Mr. Lane's description, and Corporal Hansen said to "just take him to jail anyway so he knows if he comes to Apex and gets caught, we're taking him to jail." (J.A. 86) At the suppression hearing, Corporal Hansen acknowledged that she could never "recall exactly what any bulletin said with respect to Mr. Lane." (J.A. 86)

The officers arrested Mr. Lane on suspicion of driving while his license was revoked and for possession of a concealed weapon. (J.A. 53) When the officers searched Mr. Lanes' car, they discovered pieces of mail addressed to commercial businesses. (J.A. 92-93)

Based on that evidence, a grand jury indicted Mr. Lane and his passenger for one count of possession of stolen mail and aiding and abetting the same in violation of 18 U.S.C §§ 1708 and 2 and for one count of obstructing correspondence and aiding and abetting the same in violation of 18 U.S.C §§ 1702 and 2. (J.A. 2) Mr. Lane moved to suppress the evidence presented against him as the fruit of an unlawful search in violation of the Fourth Amendment. (J.A. 3)

A full hearing was conducted, after which the trial court issued an order denying Mr. Lane's motion. (J.A. 134) The court found that the Fourth Amendment was not implicated by the interaction because the encounter was consensual and the officers did not engage in a show of authority that would cause a reasonable person to believe he was not free to leave. (J.A. 141-142) Further, the court held that even if a seizure had occurred, it was justified by reasonable suspicion since "Corporal Hansen observed [Mr.] Lane's car traveling slowly at 12:51 a.m., the middle of the night on a weekday, in Pinnacle Park . . . [when] [n]one of the businesses . . . were open," "Corporal Hansen was aware there had been crime in the Pinnacle Park area," and "[w]hen Corporal Hansen got behind [Mr.] Lane, he accelerated quickly, as if he was trying to get away from Corporal Hansen." (J.A. 143) Given this, the trial court held that once Officer Boyd observed the machete, the officers had probable cause to search Mr. Lane's car. (J.A. 143)

After the motion to suppress was denied, Mr. Lane pleaded guilty, reserving his right to appeal. (J.A. 146, 149)

ARGUMENT

I. The Apex Police performed an unconstitutional search after seizing Mr. Lane without reasonable suspicion; thus, the exclusionary rule and the right it vindicates require that the evidence obtained thereby be suppressed.

The Fourth Amendment protects "the right of the people to be secure . . . against unreasonable searches and seizures." U.S. Const., amend. IV. "[N]o right is held more sacred, or is more carefully guarded than the right of every individual to the possession and control of his own person, free from all restraint or interference . . . ." *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (internal quotation marks omitted).

To that end, law enforcement's "authority to initiate an encounter with a citizen is no greater than the authority of an ordinary citizen to approach another on the street and ask questions." *United States v. Jones*, 678 F.3d 293, 299 (4th Cir. 2012) (cleaned up)). When police go further and " 'by means of physical force or show of authority . . . in some way restrain[] the liberty of a citizen' " a seizure occurs, and the Fourth Amendment is implicated. *Id.* (quoting *Terry*, 392 U.S. at 19 n. 16). Such a seizure requires reasonable suspicion in the form of "a particularized and objective basis for suspecting the particular person [seized] of criminal activity." *Navarette v. California*, 572 U.S. 393, 396 (2014) (internal quotation marks omitted). Evidence obtained in violation of the Fourth Amendment must be suppressed under the exclusionary rule. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *United States v. Andrews*, 744 F.3d 231, 235 (4th Cir. 2009).

Here, three members of the Apex police department blocked Mr. Lane's car into a parking spot and took his license. The lead officer asked the other officers to watch Mr. Lane and to "keep an eye" on his passenger before saying, in Mr. Lane's presence, that he might be a "suspect." The

officers did not act as any other citizen might, but limited Mr. Lane's freedom of movement, demonstrated their authority, and clearly stated that he was under investigation; they transformed an otherwise permissible interaction into a seizure. When they did so, they did not have reasonable suspicion of ongoing criminal activity committed by Mr. Lane; thus, the evidence obtained thereafter was obtained in violation of the Fourth Amendment and must be suppressed as fruit of the poisonous tree.

A. Mr. Lane was seized by the Apex police, as no reasonable person who is conspicuously followed, has his vehicle blocked in when reinforcements arrive, has his license taken, hears that he is a suspect, and is placed under observation would feel free to terminate his encounter with the police.

Standard of Review

The " 'reasonable person' standard" used to determine whether an individual is seized "is an objective one, [and] thus its proper application is a question of law," which this court reviews *de novo*. *Jones*, 678 F.3d at 299 (internal citation and quotation marks omitted); *United States v. Bowman*, 884 F.3d 200, 212 (4th Cir. 2018).

Argument

A seizure occurs when " 'in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.' " *United States v. Gray*, 883 F.2d 320, 322 (4th Cir. 1989) (quoting *United States v. Mendenhall*, 446 U.S. 544, 554 (1980) (plurality opinion)).[1]

[1] In cases where the defendant attempts to resist a seizure, a further inquiry is made as to when the defendant acquiesced to law enforcement's authority. *See United States v. Stover*, 808 F.3d 991, 995-96 (4th Cir. 2015) (stating "When submission to police authority is disputed, a court must also ascertain whether and when the subject of the seizure actually acquiesced to that authority."). Here, neither the government nor the trial court questioned, when accepting *arguendo* that a seizure had occurred, that Mr. Lane acquiesced. Nor could they, as passively standing by constitutes acquiescence in this and most instances. *See Brendlin v. California*, 551 U.S. 249, 255, 261-62 (2007) (holding that by remaining stationary during traffic stop, vehicle passenger acquiesced); *United States v. Black*, 707 F.3d 531, 537-38 (4th Cir. 2012) (ignoring the second factor where the defendant did not seek to leave the scene until well after seizure).

The test does not require law enforcement to engage in a great show of force. *See Gray*, 883 F.2d 320, 322 (4th Cir. 1989) (stating "an individual need not be held at gunpoint" (internal quotation marks and alteration omitted)). Nor does it require that law enforcement engage in overtly intimidating or coercive conduct; it is sufficient that non-coercive or intimidating factors cause a "suspect to believe he cannot decline an officer's requests or otherwise terminate [an] encounter." *Bowman*, 884 F.3d at 212.

To that end, the court reviews a number of factors to determine whether an individual is seized: (1) "the number of police officers present"; (2) whether the police officers were uniformed or displayed their weapons; (3) whether the officer touched the defendant, physically restrained his movement, or blocked his departure; (4) "whether the officer's questioning was 'conversational' rather than 'intimidating' "; (5) whether the officer "treat[ed] the encounter as 'routine' in nature" rather than "inform[ing] the defendant that he positively suspected him of illegal activity"; and (6) whether the officer "promptly returned" any requested identification or other document necessary for travel. *Gray*, 883 F.2d 320, 322-23 (4th Cir. 1989); *United States v. Cloud*, 994 F.3d 233, 242-43 (4th Cir. 2021); *Jones*, 678 F.3d at 299-300; *United States v. Black*, 707 F.3d 531, 537-38 (4th Cir. 2012).

With regard to the first and second factors, an increase in the number of officers over the course of an encounter communicates a show of authority that weighs in favor of finding a seizure. *Cf. Black*, 707 F.3d at 538 (finding that "the collective show of authority by the uniformed police officers" increased when "four uniformed police officers . . . quickly increased to six . . . then seven"). Similarly, where officers "perform perimeter duties, ensuring that no other individuals interrupt[] the police interaction and preventing people from leaving the vicinity," that weighs in favor of finding a seizure. *See id.*

The fourth and fifth factors do not require that law enforcement expressly communicate to an individual that he is under investigation or a suspect. *See Jones*, 678 F.3d at 300. Rather, if the suspect can easily gather from the officers' conduct that he is under investigation, that supports a finding that a seizure has occurred. *See id.* For instance, where an "encounter . . . beg[ins] with a citizen knowing that the police were conspicuously following him, rather than . . . [by] being approached by officers seemingly at random," that communicates suspicion and weighs in favor of a seizure. *Id.*

The third and sixth factors, physical restraint and the retention of travel documents, deserve great weight because they not only communicate to a reasonable person that they are not free to leave, but actually impede the person's ability to leave. *See id.*; *United States v. Weaver*, 282 F.3d 302, 310-11 (4th Cir. 2002).

Where an individual travels by automobile and is not situated as a pedestrian, the retention of his license forces him "to choose between the Scylla of consent to the encounter or the Charybdis of driving away and risk[ing] being cited for driving without a license." *Weaver*, 282 F.3d at 311. This effects a seizure because that is, "of course, no choice at all." *Id.*[2] A retention does not occur when an officer remains in the presence of the defendant and is reasonably diligent in checking the validity of a license. *See United States v. Analla*, 975 F.2d 119, 124 (4th Cir. 1992) (finding no seizure where the officer "did not take the license into his squad car, but instead stood beside the car, near [the defendant]" and checked its validity without delay). But when the officer

[2] That law enforcement's retention of important travel documents, such as plane tickets and licenses, effects a seizure is an almost unanimous position. 4 Wayne R. LaFave, *Search & Seizure* § 9.4(a) n. 96 (6th ed. 2022) (collecting cases). Some courts insist that a seizure occurs the moment the officer obtains the license, regardless of how long they possess it. *Id.*; *see, e.g.*, *United States v. Guerrero*, 472 F.3d 784, 786 (10th Cir. 2007) ("But once the officers take possession of [the] license, the encounter morphs into a detention.").

leaves the presence of a person, such that he is not "free at [that] point to request that his license . . . be returned," or where the officer is not reasonably diligent, a seizure occurs. *See id.*; *see also*, *Keller v. State*, 169 P.3d 867, 870 (Wyo. 2007) (finding a seizure during an otherwise consensual encounter when the officer "took [the suspects'] driver's licenses and walked back to his patrol vehicle for records checks"); *cf. United States v. Sharpe*, 470 U.S. 675, 687 (1985) (holding that even when a seizure is justified, it becomes unconstitutional when extended because law enforcement did not diligently perform its investigation).

"[W]hen an officer blocks a defendant's car from leaving the scene . . . the officer demonstrates a greater show of authority than does an officer who just happens to be on the scene and engages a citizen in conversation," and effects a seizure. *Jones*, 678 F.3d at 300-302; *United States v. Watkins*, 816 Fed.Appx. 821, 825 (4th Cir. 2020) (unpublished) (stating "when an officer has used his cruiser to physically block a suspect's vehicle from leaving, the suspect is seized"). This is true even if the defendant's car is only partially blocked, so long as the officer's vehicle impedes the car's movement or makes it more difficult to navigate an exit. *See Jones*, 678 F.3d at 297, 302. In *Jones*, for instance, this Court found the defendant was seized and his car was "block[ed]" even though he had "the option of 'back[ing] [his] vehicle back up' the one-way driveway going in the 'wrong direction.' " *Id.* (alteration in original). This is consistent with the holdings of other courts, which have found seizures where a patrol car's placement would have forced the defendant to engage in "a number of turns" or "maneuver" around the police. *United States v. Delaney*, 955 F.3d 1077, 1082-83 (D.C. Cir. 2020) (holding that when the police park in such a way that "the [defendant] would have had to execute 'a number of turns . . . to get out of the parking lot.' . . . [that is] highly suggestive of a [seizure]."); *State v. Jestice*, 861 A.2d 1060, 1062-63 (Vt. 2004) (holding that "the fact that it was possible for the [defendants] to back up and

maneuver their car past the patrol car" does not change the fact that "park[ing] nose-to-nose with the [defendants'] car" effectively seized them).

In Mr. Lane's case, all but one of the factors this Court relies on suggest that a seizure occurred. Particularly, the retention of Mr. Lane's license and the placement of Officer Warren and Officer Boyd's patrol car, which blocked the movement of Mr. Lane's car, make clear that he was seized; no reasonable person in his situation would have believed they were free to go.

Three uniformed officers were present, all of whom arrived in marked patrol cars. Further weighing in favor of a seizure, the show of force increased as the encounter continued, with the number of officers increasing from one to three, and the officers "perform[ing] perimeter duties" when they were told to "keep an eye" on Mr. Lane and his passenger.

None of the officers treated the encounter as "routine," but "informed [Mr. Lane] that he [was] positively suspected of criminal activity." Corporal Hansen wrote in her incident report that Mr. Lane "accelerated quickly as [i]f he was attempting to get away from [her]." That inferential leap only makes sense if Corporal Hansen were in fact "conspicuously following" Mr. Lane before the encounter, and Corporal Hansen testified that she thought she had been spotted. Even if the beginning of the encounter did not communicate that Mr. Lane was "positively suspected of criminal activity," Corporal Hansen and Officer Warren discussed, in Mr. Lane's presence, that "this [sic] may be the suspects from the other night," which clearly communicates he is suspected of criminal activity.

Mr. Lane was travelling by automobile, and thus Corporal Hansen effected a seizure when she did not "promptly return" his driver's license. Indeed, Mr. Lane's license was never returned. Corporal Hansen walked to her car and away from Mr. Lane to check his license, rather than remaining in his presence and performing the check by radio. Mr. Lane was no longer "free at

[that] point to request that his license . . . be returned," especially since Corporal Hansen had directed Officer Warren to watch him. Nor was Corporal Hansen reasonably diligent in completing her check of Mr. Lane's license. She returned to her vehicle to do so but "quickly turn[ed] around" and "c[ame] back to [her] fellow officers" for an unnecessary colloquy about Mr. Lane's status as a suspect before she undertook that effort. Corporal Hansen put Mr. Lane to an impossible choice "between the Scylla of consent to the encounter [and] the Charybdis of driving away and risk[ing] being cited for driving without a license." When she did so, she seized him.

Officers Boyd and Warren also effected a seizure when they blocked Mr. Lane's car, which physically restrained his movement and blocked his departure. Officer Warren parked his patrol car with the nose to the rear of Mr. Lane's, while Mr. Lane was in a parking spot, with just enough room "you could walk . . . between [the] two vehicles." Officer Boyd recognized that they had parked very close to Mr. Lane and acknowledged that the car was "partially blocked" such that it might be possible for Mr. Lane to back up "but [that] he would have had to do some maneuvering to do so." That Mr. Lane "could have backed up" by engaging in difficult "maneuvering" is immaterial, just as the defendant's ability in *Jones* to drive the wrong direction, in reverse, down a one-way road was immaterial. The impediment to movement effects a seizure regardless by "demonstrat[ing] a greater show of authority than . . . an officer who just happens to be on the scene and engages a citizen in conversation."

The only factor that counts in favor of the government is that the initial questioning by Corporal Hansen seems " 'conversational' rather than 'intimidating.' " But officers do not need to use overt intimidation to effect a seizure, and such a miniscule consideration cannot overcome the weight of the other factors. A reasonable person who is conspicuously followed by police, whose vehicle is blocked in when more officers arrive at the scene, whose license is taken out of

his presence and never returned, who overhears that he is a "suspect," and who has law enforcement "keep an eye" on him and his passenger would not feel that he is free to leave, regardless of how "conversational" the police were. Mr. Lane was seized for purposes of the Fourth Amendment, if not earlier, when Corporal Hansen told Officer Warren that Mr. Lane was a suspect and then walked off with his license, before the machete was found.

B. The officers lacked reasonable suspicion to seize Mr. Lane, as the factors cited by the trial court only give rise to a hunch of ongoing criminal activity and are susceptible to many innocent explanations.

Standard of Review

This court "appl[ies] a *de novo* standard of review to a district court's determination that an officer had reasonable suspicion," but reviews factual determinations for clear error, viewing the evidence in the light most favorable to the government. *Bowman*, 884 F.3d at 209.

Argument

For a seizure to be legal, " 'law enforcement officers must reasonably suspect that [the individual seized] is engaged in, or poised to commit, a criminal act *at that moment*.' " *United States v. Wilson*, 953 F.2d 116, 125 (4th Cir. 1991) (quoting *United States v. Sokolow*, 490 U.S. 1, 12 (1989) (Marshall, J., dissenting)) (emphasis original to *Sokolow*).

"[T]he concept of reasonable suspicion is somewhat abstract," and the courts have "deliberately avoided reducing it to a neat set of legal rules." *United States v. Arvizu*, 534 U.S. 266, 274 (2002). However, the government must, at minimum, be able to articulate "a particularized and objective basis for suspecting that the [defendant]" is engaged in or poised to commit a criminal act. *See Wilson*, 953 F.2d at 125; *United States v. Powell*, 666 F.3d 180, 185-86 (4th Cir. 2011). To prove that basis, the government may only rely upon the facts known to the officers on scene. *Powell*, 666 F.3d at 186. An " 'inchoate and unparticularized suspicion or hunch' " is never enough. *Id.* (quoting *Sockolow*, 490 U.S. at 7).

The government's asserted basis is judged against "a commonsense, nontechnical standard that deals with the factual and legal considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Bowman*, 884 F.3d at 213 (cleaned up). To that end, the standard is "cognizant of both context and the particular experience of the officers" on the scene. *United States v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008). But instead of broad deference, this Court has taken the government's past propensity to "spin . . . largely mundane acts into a web of deception" and the fact that "the exclusionary rule is [the courts'] sole means of ensuring that police refrain from engaging in the unwarranted harassment or unlawful seizure of anyone" as reason for skepticism. *See United States v. Foster*, 634 F.3d 243, 248-49 (4th Cir. 2011); *United States v. Black*, 707 F.3d 531, 539 (4th Cir. 2013) (stating "at least four times in 2011 we admonished against the Government's misuse of innocent facts as indicia of suspicious activity"); *cf. United States v. Williams*, 808 F.3d 238, 243-44, 253 (4th Cir. 2015) (noting a similar sentiment and recounting that the trial court had to remove one of the factors supporting reasonable suspicion in its order after "*Brady* material . . . directly contradicted [an officer]'s [testimony] at the initial hearing.").

The government and officers must be put to the test, as otherwise "an experienced police officer's recitation of some facts followed simply by a legal catchphrase, would allow the infringement of individual rights with impunity." *Williams*, 808 F.3d at 253. "[A]n officer and the Government" cannot "simply label a behavior as 'suspicious' to make it so." *Foster*, 634 F.3d 243, 248 (4th Cir. 2008). Rather, the government and officers have an obligation "to either articulate why a particular behavior is suspicious or logically demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance." *Id.*; *Cf. Williams*, 808 F.3d at 252-53 (stating that the fact that "[t]he

deputies neither articulated how [the defendant]'s particular behavior was suspicious nor logically demonstrated that his behavior was indicative of some more sinister activity" is fatal to the government's case). Where the reasoning employed is "absurd," it can be rejected outright, *see Digiovanni*, 650 F.3d at 512, and, even where it is not, if "there are an infinite number of reasonable explanations, unrelated to any criminal behavior" to explain a fact this court has been "extremely wary of accepting" that fact as indicative of reasonable suspicion, *Foster*, 643 F.3d at 247-49.

Even if the circumstances are suspicious, the government must cross a second threshold before it can prove an officer possessed reasonable suspicion; it must show that "the articulated factors together . . . eliminate a substantial portion of innocent" citizens. *See United States v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004).

Before considering whether the totality of the circumstances provides reasonable suspicion, each indicium should be viewed in isolation to determine whether it indicates criminality. *See United States v. Slocumb*, 804 F.3d 677, 682 (4th Cir. 2015). Here, the trial court relied on (1) the fact that Mr. Lane was "traveling slowly at 12:51, the middle of the night, on a weekday in Pinnacle Park . . . [while] [n]one of the businesses were open," where "Corporal Hansen was aware there had been crime," and (2) that "[w]hen Corporal Hansen got behind Lane, he accelerated quickly, as if he was trying to get away from Corporal Hansen."

(1) Mr. Lane's presence in Pinnacle Park at night, where previous crimes had been reported, while the businesses were closed, is unparticularized and does not give rise to reasonable suspicion.

While the defendant's presence in a "high-crime area, the lateness of the hour, and the fact that [a] business [the defendant is outside of] ha[s] been closed for many hours . . . can contribute to a finding of reasonable suspicion" they are of minimal value. *Slocumb*, 804 F.3d at 682. The factors "do little to support the claimed particularized suspicion as to [the defendant]." *Id.* (internal quotation marks and alterations omitted).

Here, Mr. Lane's presence in an area of closed businesses at night, where an officer is aware of previous criminal activity, is unparticularized and at best minimally suspicious. In addition, while it may seem self-evident what Corporal Hansen's suspicions were, she did not meet the required threshold of "articulat[ing] why [Mr. Lane's] particular behavior is suspicious." She merely observed that the businesses in the area were closed, that the vehicle was "driving slowly," and that "[she] thought [she] would follow this person, see what they were doing."

That Corporal Hansen failed to articulate and explain her suspicion is of particular import because Mr. Lane's presence is not susceptible only to nefarious explanation, but to "an infinite number of reasonable explanations, unrelated to criminal behavior." Given that, even if Corporal Hansen had explained her suspicion, Mr. Lane's presence would be of little weight. The conduct that Corporal Hansen observed, driving through Pinnacle Park late at night without stopping, is the same thing any innocent person who missed his turn into the Sheetz might do, using the Reliance Avenue to Lufkin Road-loop rather than drive further and then backtrack. Setting that likely explanation aside, Mr. Lane's presence in Pinnacle Park could be no more nefarious than a confused out-of-towner misunderstanding the directions he and his passenger were given or needing to turn around after a missed turn or wrong exit, considering the proximity to U.S. 1.

Given that Mr. Lane's driving through Pinnacle Park is minimally suspicious at best—being unparticularized to Mr. Lane—that Corporal Hansen failed to explain why it was suspicious, and that it is susceptible to a plethora of reasonable, innocent explanations, this court should reject it as a factor supporting reasonable suspicion.

(2) <u>It does not provide reasonable suspicion that when "Corporal Hansen got behind [Mr.] Lane, he accelerated quickly," as his behavior is not actually evasive.</u>

"Where a defendant did not try to flee or leave the area," evasion may only support a finding of "reasonable suspicion on a showing of more 'extreme' or unusual nervousness or acts

of evasion." *Slocumb*, 804 F.3d at 683. And where a defendant is cooperative with law enforcement, such as by "voluntarily paus[ing] to speak with [law enforcement] upon [an] officer's request," that undercuts a suggestion that his conduct was evasive. *Cf. Massenburg*, 654 F.3d at 482 (stating "the men were not evasive; they . . . voluntarily paused to speak with the officer upon the officer's request. In fact, they were cooperative . . . .").

For evasion to exist, the defendant's conduct must suggest that he "is not going about [his] business, but instead . . . that [he] is avoiding [law enforcement] for other than innocent reasons." *See United States v. Smith*, 396 F.3d 579, 584 (4th Cir. 2005) (internal citations and quotation marks omitted). Prototypical cases involve a defendant who confronts the police head-on, such as in a police roadblock or when they are actively approaching, and then takes steps to avoid an interaction. *Id.* (collecting cases).

For instance, in *United States v. Sims,* this Court found reasonable suspicion for a stop and frisk in part based on evasive conduct where the defendant " 'jerk[ed] right back' " when officers "found [him] behind a house, 'crouching' and 'peeking around the corner,' " from where he had been observing officers search a nearby alley. 196 F.3d 284, 286-87 (4th Cir. 2002) (alteration in original). And in *United States v. Brugal*, this Court found reasonable suspicion for a traffic stop in part based on evasion where the defendant "exited Interstate 95 after passing two well-lit decoy drug checkpoint signs" onto an exit that "showed no signs of activity at [that late hour]" after he had just passed another exit "with several well-lit twenty-four hour gas stations." 209 F.3d 353, 359-60 (4th Cir. 2000) (en banc) (plurality opinion).

In *United States v. Sprinkle*, by contrast, this court rejected the government's argument that when the driver "started his car and pulled from the curb right after the officers walked by" he engaged in evasive conduct that supported a finding of reasonable suspicion. 106 F.3d 613, 618

(4th Cir. 1997). The court said that "driving away in a normal, unhurried fashion, [does not] lend itself to a finding of reasonable suspicion" because mere departure from a scene is not flight. *Id.* at 618.

Here, any attempt to characterize Mr. Lane's "acceleration" as "evasive" overtaxes the word. Mr. Lane did not "try to flee" or "leave the area." He drove six tenths of a mile to a Sheetz gas station—never returning to a main road—in an "unhurried fashion," obeying the speed limit at all times. Once he arrived, Corporal Hansen approached him and he "voluntarily paused to speak with" her upon her request, significantly undercutting any suggestion of evasion.

Unlike the evasive conduct credited by this court in *Brugal* and *Sims*, Mr. Lane's conduct is fully consistent with "going about one's business." Corporal Hansen readily admits that Mr. Lane did not break any traffic laws—or else she would have pulled him over; she only faults him for accelerating from zero miles per hour to thirty-five miles per hour more quickly than she would have liked, as judged from her vantage point travelling only twenty-five miles per hour. Corporal Hansen has "simply label[ed]" Mr. Lane's driving habits "suspicious" with the barest assertion that he was "attempting to get away from [her]," employing a "legal catchphrase" in the manner *Williams* cautions against. Corporal Hansen has not demonstrated that Mr. Lane's acceleration was suspicious, nor was it.

* * *

While "factors 'susceptible to innocent explanation' individually may 'suffice to form a particularized and objective basis' when taken together," such factors, taken together, must be damningly suspicious to support reasonable suspicion. *See Slocumb*, 804 F.3d at 682 (quoting *United States v. Arvizu*, 534 U.S. 266, 277 (2002) (alterations omitted)).

For instance, in *Walker v. Donahue*, this Court found that a seizure was supported by reasonable suspicion where the detainee possessed an AR-15, a school shooting had recently been in the news, the detainee was walking near a school, and the detainee was wearing a black shirt and camouflage pants. *See* 3 F.4th 676, 685-86 (4th Cir. 2021). All of the factors taken individually were legal and susceptible to innocent explanation, but taken together and against the backdrop of a recent school shooting, the court reasoned that the officer was justifiably suspicious of a potential copycat crime. *Id.*

In *Slocumb*, by contrast, this Court found a plethora of largely innocent factors insufficient to find reasonable suspicion. 804 F.3d at 684. There, the government relied on five factors: (1) that the officers were aware of the high-crime nature of the area; (2) the lateness of the hour; (3) that the defendant was in the parking lot of a commercial business that had been closed for several hours; (4) that the defendant was evasive, appearing to hurry his partner, avoiding eye-contact, and giving low, mumbled responses; (5) and that his presence "seemed 'inconsistent' with his explanation for his presence." *Id.* at 682. The court found that the time of day, high-crime nature of the area, and presence near a closed business were of vanishingly little value, being unparticularized to the defendant, and that the supposed "evasive" behavior cited by the officers was not the type credited by this court as suspicious. *Id.* Instead, the defendant's "presence in the parking lot and the activity accompanying it" were "seemingly innocent acts" which, "[v]iewed in their totality . . . [did] not amount to reasonable suspicion." *Id.* at 684.

Here, the factors found by the district court fall far short of those described in *Walker* and mirror those rejected in *Slocumb*. As in *Slocumb*, the government places heavy reliance on the lateness of the hour, Mr. Lane's presence outside of closed businesses, and previous criminal activity in the area, which are unparticularized to Mr. Lane and susceptible to innocent

explanations. Similarly, the government attempts to characterize Mr. Lane's "acceleration" as evasive even though, as demonstrated above, it, like the defendant's conduct in *Slocumb*, does not rise to the level of evasion credited by this court as suspicious. Mr. Lane's presence in Pinnacle Park and the accompanying activity, both seemingly innocent acts, do not amount to reasonable suspicion when viewed in their totality.

The officers had, at most, "an inchoate and unparticularized hunch" that Mr. Lane was involved in criminal activity. Their seizure of Mr. Lane was unjustified by reasonable suspicion and violated his Fourth Amendment rights.

C. Because Mr. Lane was seized without probable cause, any evidence obtained from that seizure must be suppressed under the exclusionary rule.

Standard of Review

"In reviewing the denial of a motion to suppress the appellate court reviews the legal conclusions *de novo* and factual findings for clear error." *United States v. Pulley*, 987 F.3d 370, 376 (4th Cir. 2021).

Argument

The evidence obtained after Mr. Lane was seized was obtained in violation of the Fourth Amendment. It is well established that "evidence seized during an unlawful search [cannot] constitute proof against the victim of the search." *Wong Sun v. United States*, 371 U.S. 471, 485 (1963). The only way that evidence can be used is if it is obtained from an independent source or "the connection between the lawless conduct of the police and the discovery of the challenged evidence has become so attenuated as to dissipate the taint." *Id.* at 487 (internal citations and quotation marks omitted).

Here, there is no independent source and no attenuation between the illegal seizure of Mr. Lane and the discovery of his machete or the mail in his possession. Therefore, the mail must be suppressed.

Applicant Details

First Name	**Marisa**
Middle Initial	**D**
Last Name	**Wright**
Citizenship Status	**U. S. Citizen**
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Address	**Address** Street **7493 Boardwalk St.** City **Crown Point** State/Territory **Indiana** Zip **46307** Country **United States**
Contact Phone Number	**2197791487**

Applicant Education

BA/BS From	**University of Michigan-Ann Arbor**
Date of BA/BS	**May 2021**
JD/LLB From	**Harvard Law School** **https://hls.harvard.edu/dept/ocs/**
Date of JD/LLB	**May 31, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Harvard Civil Rights–Civil Liberties Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Schwartztol, Larry
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Greenwood, Ruth
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Tobin, Susannah Barton
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Marisa Wright

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June 12, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to apply for a clerkship in your chambers starting in Fall 2024. Enclosed please find my resume, law school transcript, undergraduate transcript, and writing sample. You will also receive separate letters of recommendation from the following people:

- Professor Susannah Tobin, stobin@law.harvard.edu, (617) 496-3673
- Professor Ruth Greenwood, rgreenwood@law.harvard.edu, (617) 998-1010
- Professor Larry Schwartztol, lschwartztol@law.harvard.edu, (617) 384-0361

I will bring strong research and writing skills to my work as a clerk. As a student journalist, I wrote longform pieces, as well as edited 3-5 articles weekly. Over the past three years, I have also worked as a freelance copywriter, a position in which I write 20-30 articles per month and developed the ability to absorb new information quickly and turn out cogent, succinct written work efficiently. I have further honed these skills at Harvard through my role on the *Harvard Civil Rights-Civil Liberties Law Review*, as well as work as a research assistant for various professors.

I would be honored to contribute my skills to the important work of your chambers, and I would greatly appreciate an opportunity to interview with you. Thank you in advance for your time and consideration.

Sincerely,
Marisa Wright

Marisa Wright

24 Chauncy St., Cambridge, MA 02138 | 219.779.1487 | mwright@jd24.law.harvard.edu

EDUCATION

HARVARD LAW SCHOOL, *J.D. Candidate* May 2024
Activities**:** *Harvard Civil Rights-Civil Liberties Law Review*, Executive Online Content Editor
Mississippi Delta Project, Co-Chair and Reproductive Justice Initiative Team Lead
Women Law Students Association, Domestic Policy Committee Co-Chair
American Constitution Society, Section Representative

UNIVERSITY OF MICHIGAN, *B.A.* in Political Science (Honors) and Women's and Gender Studies (Honors) May 2021
Honors: Stanford Lipsey Student Publications Endowed Scholarship (excellence in student journalism award)
University Honors (five terms)
James B. Angell Scholar (two or more consecutive "A" terms)
Thesis: *'The Pink Wave' in 2018: Democratic Women Candidates' Motivations to Run for Congress and the Future of Women's Political Representation*

EXPERIENCE

U.S. DEPARTMENT OF JUSTICE, VOTING SECTION, *Summer Legal Intern*, Washington D.C. Summer 2023
Assist enforcement of the civil provisions of the federal voting rights laws by conducting legal and factual research regarding ongoing investigations and litigation.

PROFESSORS NIKOLAS BOWIE and DAPHNA RENAN, *Research Assistant*, Cambridge, MA Jan. 2023 – Present
Assist with researching historical newspaper databases for 19th and 20th century writing in support of and against judicial supremacy for their forthcoming book "Supremacy: How Rule by the Court Replaced Government by the People."

ELECTION LAW CLINIC, *Student Attorney*, Cambridge, MA Jan. 2023 – May 2023
Supported hands-on racial gerrymandering litigation and state voting rights act advocacy through legal research and writing.

DEMOCRACY AND RULE OF LAW CLINIC, *Student Attorney*, Cambridge, MA Sept. 2022 – Dec. 2022
Supported Protect Democracy through legal research and writing, legal drafting, and policy advocacy and analysis.

PROFESSOR COREY BRETTSCHNEIDER, *Research/Editorial Assistant*, Remote Sept. 2022 – Dec. 2022
Fact-checked and provided substantive feedback on the manuscript of Professor Brettschneider's forthcoming book about the presidency, as well as on his forthcoming book *Classic Supreme Court Cases* with the Penguin Liberty series by Penguin Classics.

PROFESSOR LARRY SCHWARTZTOL, *Research Assistant*, Cambridge, MA Aug. 2022 – Dec. 2022
Researched and wrote memoranda on democracy reform, election administration, and anti-discrimination law.

FREELANCE, *Writer*, Remote June 2022 – Present
Pitch and write articles on a variety of topics that have been published or are forthcoming in *LIBER*, Balls & Strikes, *Ms. Magazine*, *Harvard Review*, JURIST, and NAACP-LDF Original Content.

GENDER JUSTICE, *Summer Legal Intern*, Remote Summer 2022
Researched and wrote legal memoranda on topics including teacher and student free speech, Title IX regulations, discovery subpoenas and corporate officers, preserving issues for appeal, and South Dakota civil rights laws. Assisted with trial preparation, including voir dire and cross examination practice.

MOORE TUTORING, *LSAT Tutor*, Remote Mar. 2022 – Present
Instruct students in a dynamic and supportive manner on the LSAT. Offer reduced-cost tutoring for students based on need.

PROFESSOR RANDALL KENNEDY, *Research/Editorial Assistant*, Cambridge, MA Jan. 2022 – Dec. 2023
Provided detailed substantive feedback and in-depth edits on manuscript of Professor Kennedy's forthcoming book.

AUTOMOTIVE INTERNET MEDIA, *Freelance Writer*, Remote Oct. 2020 – Present
Research and write editorials featuring clients' products to maximize the success of marketing campaigns.

THE MICHIGAN DAILY, *Deputy Magazine Editor*, Ann Arbor, MI Sept. 2018 – May 2021
Edited 3-5 weekly personal columns and investigative pieces for publication featuring longform narrative writing and investigative reporting. Developed story and design ideas with 8-10 writers at weekly story meetings.

DEMOCRATIC NATIONAL COMMITTEE, *Organizer, Organizing Corps 2020*, Detroit, MI Summer 2019
Recruited and managed 40+ volunteers during canvas launches, candidate meet and greets, and phone banking events. Registered 300+ Michigan voters and collected 200+ Permanent Absentee Voter applications.

Harvard Law School

Date of Issue: June 7, 2023
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Page 1 / 2

Record of: Marisa D Wright
Current Program Status: JD Candidate
Pro Bono Requirement Complete

JD Program

Fall 2021 Term: September 01 - December 03

1000	Civil Procedure 7 Charles, Guy-Uriel	H	4
1002	Criminal Law 7 Kamali, Elizabeth Papp	P	4
1006	First Year Legal Research and Writing 7A Tobin, Susannah	H	2
1003	Legislation and Regulation 7 Rakoff, Todd	P	4
1004	Property 7 Smith, Henry	P	4
	Fall 2021 Total Credits:		18

Winter 2022 Term: January 04 - January 21

1052	Lawyering for Justice in the United States Gregory, Michael	CR	2
	Winter 2022 Total Credits:		2

Spring 2022 Term: February 01 - May 13

2651	Civil Rights Litigation Michelman, Scott	P	3
1024	Constitutional Law 7 Gersen, Jeannie Suk	P	4
1001	Contracts 7 Coates, John	H	4
1006	First Year Legal Research and Writing 7A Tobin, Susannah	P	2
1005	Torts 7 Sargentich, Lewis	LP	4
	Spring 2022 Total Credits:		17
	Total 2021-2022 Credits:		37

Fall 2022 Term: September 01 - December 31

2035	Constitutional Law: First Amendment Feldman, Noah	H	4
8049	Democracy and the Rule of Law Clinic Schwartztol, Larry	H	3
2928	Election Law Charles, Guy-Uriel	P	3
2994	Legal Tools for Protecting Democracy and the Rule of Law in America Schwartztol, Larry	H	2
2226	Sex Equality MacKinnon, Catharine	P	3
	Fall 2022 Total Credits:		15

Winter 2023 Term: January 01 - January 31

7000W	Independent Writing Gersen, Jeannie Suk	EXT	0
	Winter 2023 Total Credits:		0

Spring 2023 Term: February 01 - May 31

3192	Advanced Readings in The Thirteenth Amendment Goodwin, Michele	CR	1
2416	Becoming a Law Professor Tobin, Susannah	CR	1
8053	Election Law Clinic Greenwood, Ruth	H	3
3005	Election Law Clinical Seminar Greenwood, Ruth	H	2
2079	Evidence Rubin, Peter	P	2
2735	Writing about the Law for General Audiences Wittes, Benjamin	H	2
3500	Writing Group: Topics in Criminal Law, Due Process, Equal Protection, Family Law, Sexual Harassment, Sexuality, Title IX Gersen, Jeannie Suk	CR	1
	Spring 2023 Total Credits:		12
	Total 2022-2023 Credits:		27

Fall 2023 Term: August 30 - December 15

3216	Advanced Constitutional Law Feldman, Noah	~	4
2050	Criminal Procedure: Investigations Colgan, Beth	~	4
2069	Employment Law Sachs, Benjamin	~	4
2169	Legal Profession Gordon-Reed, Annette	~	3
	Fall 2023 Total Credits:		15

continued on next page

Harvard Law School

Record of: Marisa D Wright

Date of Issue: June 7, 2023
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Spring 2024 Term: January 22 - May 10

2086	Federal Courts and the Federal System Fallon, Richard	~	5

Spring 2024 Total Credits:	5
Total 2023-2024 Credits:	20
Total JD Program Credits:	84

End of official record

HARVARD LAW SCHOOL
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Cambridge, Massachusetts 02138
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Transcript questions should be referred to the Registrar.
~~~~~~

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.
~~~~~~

A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems
Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)
Magna cum laude Next 10% of the total class following *summa* recipients
Cum laude Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

Academic Transcript of: WRIGHT,MARISA (STUDENT NAME) | 16083267 (STUDENT ID NUMBER) | E196623001 -1 (CONTROL NUMBER) | 29-May-2023 (DATE ISSUED) | Page 1

0393966662
STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN

OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382

University Registrar

UNIVERSITY OF MICHIGAN DEGREES AWARDED

School/College: Literature, Sci, and the Arts
Major: Honors in Political Science
Major: Honors in Women's and Gender Studies
Minor: Writing
Degree: Bachelor of Arts, With High Distinction
Awarded: 30-APR-2021

NON-UNIVERSITY OF MICHIGAN ACADEMIC EXPERIENCE

Indiana University Bloomington
Bloomington IN 47405

ADVANCED PLACEMENT AND EXAMINATION CREDIT

			CREDITS
ENGCMPTC	101X	Departmental	3.00
ENGLISH	101X	Departmental	3.00
GEOG	101X	Departmental	3.00
HISTORY	101X	Departmental	4.00
POLSCI	111	Intro Amer Pol	4.00

BEGINNING OF UNDERGRADUATE RECORD

Transfer Course Credit Accepted towards	MSH	CTP	MHP
Undergraduate LSA	0.00	17.00	0.00

Fall 2017		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
FRENCH	103	Review of Elem	B	4.00	4.00	4.00	12.00
LHSP	125	College Writing	A	4.00	4.00	4.00	16.00
POLSCI	101	Our TV, Our Selves: The Rhetoric of Television Intro Pol Thry	A	4.00	4.00	4.00	16.00
SAC	202	Digital Media	A	4.00	4.00	4.00	16.00
Term Total		**GPA: 3.750**		**16.00**	**16.00**	**16.00**	**60.00**

Winter 2018		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
ALA	421	Creat Inclusive Comm	CR	2.00	0.00	2.00	0.00
FRENCH	231	Second-Year	P	4.00	0.00	4.00	0.00
LHSP	230	Writing & Arts II Tony Kushner & his Antecedents	A+	3.00	3.00	3.00	12.00
POLSCI	190	First-Year Sem When An Identity Becomes Political	A	3.00	3.00	3.00	12.00
WOMENSTD	270	Gender & the Law	A+	4.00	4.00	4.00	16.00
Term Total		**GPA: 4.000**		**16.00**	**10.00**	**16.00**	**40.00**

Fall 2018		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
FRENCH	232	Second-Year	B	4.00	4.00	4.00	12.00
POLSCI	389	Topics Campaigns and Elections	A	3.00	3.00	3.00	12.00
POLSCI	389	Topics Comparative Nationalism and Ethnic Politics	A	3.00	3.00	3.00	12.00
WOMENSTD	240	Int Womn Std	A	4.00	4.00	4.00	16.00
WRITING	201	Dig Media Wrtg Mini The Art of Podcasting	A	1.00	1.00	1.00	4.00
Term Total		**GPA: 3.733**		**15.00**	**15.00**	**15.00**	**56.00**

Continued next page >

0393966662
STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN

OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382

University Registrar

Winter 2019		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
POLSCI	306	Amer Pol Thot: Early	A	3.00	3.00	3.00	12.00
POLSCI	389	Topics	A	3.00	3.00	3.00	12.00
		Congress and the Presidency					
WOMENSTD	330	Feminist Thought	A	3.00	3.00	3.00	12.00
WOMENSTD	344	Topic Gender&Culture	A	3.00	3.00	3.00	12.00
		Writing Sex: Contemporary Black Women					
WRITING	220	Writing Minor Intro	A	3.00	3.00	3.00	12.00
Term Total		**GPA: 4.000**		**15.00**	**15.00**	**15.00**	**60.00**

Fall 2019		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
ENVIRON	167	Evol Envir GlobHeath	A	4.00	4.00	4.00	16.00
POLSCI	331	Env Pub Op Analysis	A+	3.00	3.00	3.00	12.00
POLSCI	353	Arab-Israeli	A	4.00	4.00	4.00	16.00
WOMENSTD	220	Women's Hlth	A	3.00	3.00	3.00	12.00
WOMENSTD	425	Fem Pract Oral Hist	A	3.00	3.00	3.00	12.00
Term Total		**GPA: 4.000**		**17.00**	**17.00**	**17.00**	**68.00**

Winter 2020		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
During this term, a global pandemic required significant changes to course delivery. Most courses adopted mandatory alternate grading, though students could opt to have traditional grading.							
POLSCI	381	Pol Science Research	P	3.00	0.00	3.00	0.00
PSYCH	112	As Natural Sci	A	4.00	4.00	4.00	16.00
WOMENSTD	389	Junior Honors Sem	A	3.00	3.00	3.00	12.00
		Honors					
WOMENSTD	410	Reproductive Justice	A	3.00	3.00	3.00	12.00
WRITING	420	Writing Capstone	A	3.00	3.00	3.00	12.00
Term Total		**GPA: 4.000**		**16.00**	**13.00**	**16.00**	**52.00**

Fall 2020		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
PHIL	303	Intr Symbol Logic	A	4.00	4.00	4.00	16.00
POLSCI	389	Topics	P	3.00	0.00	3.00	0.00
		Law and American Political Development					
POLSCI	493	Senior Honors	A	4.00	4.00	4.00	16.00
		Honors					
WGS	313	Top Gender Hums	A	3.00	3.00	3.00	12.00
		Women and Well-Being in Literature					
WGS	441	Snr Honors Seminar I	CR	1.00	0.00	1.00	0.00
		Honors					
WGS	490	Honors Thesis	A	3.00	3.00	3.00	12.00
		Honors					
Term Total		**GPA: 4.000**		**18.00**	**14.00**	**18.00**	**56.00**

Winter 2021		Undergraduate LSA	Grade	Hours	MSH	CTP	MHP
POLSCI	494	Senior Honors	A	4.00	4.00	4.00	16.00
		Honors					
POLSCI	495	Sem Pol Theory	A	3.00	3.00	3.00	12.00
		Disability: A Democratic Dilemma					
WGS	442	Senior Honors Sem II	CR	1.00	0.00	1.00	0.00
		Honors					
WGS	451	Women, Ineq, Work	A+	3.00	3.00	3.00	12.00
WGS	491	Honors Thesis	A	3.00	3.00	3.00	12.00
		Honors					
Term Total		**GPA: 4.000**		**14.00**	**13.00**	**14.00**	**52.00**

Undergraduate LSA							
Cumulative Total		**GPA: 3.929**		**113.00**	**144.00**	**444.00**	

Continued next page >

0393966662
STATE OF MICHIGAN UIC

UNIVERSITY OF MICHIGAN
OFFICE OF THE REGISTRAR - ANN ARBOR, MI 48109-1382

University Registrar

UNDERGRADUATE REMARKS

21-Dec-2017	University Honors
20-Dec-2018	University Honors
01-May-2019	University Honors
20-Dec-2019	University Honors
15-Mar-2020	James B. Angell Scholar
30-Apr-2020	University Honors
18-Dec-2020	University Honors
31-Mar-2021	James B. Angell Scholar
30-Apr-2021	University Honors
20-Mar-2022	James B. Angell Scholar

END OF UNDERGRADUATE RECORD

End of Transcript
Total Number of Pages 3

TRANSCRIPT GUIDE

DEFINITION OF AN OFFICIAL TRANSCRIPT

An Official Transcript is one that has been received directly from the issuing institution. It must bear the University seal, date and signature of the registrar. Transcripts received that do not meet these requirements should not be considered official and should be routinely rejected for any permanent use. This definition of an official transcript has been endorsed by the Michigan Association of Collegiate Registrars and Admissions Officers.

ACCREDITATION

The three campuses of the University of Michigan are accredited by the North Central Association of Colleges and Schools - Higher Learning Commission. Many of the departments and programs within the University are also accredited by various agencies. Detailed information about these agencies and the accreditation process is available from the Dean's office of each academic unit.

CALENDAR

The University of Michigan operates under the trimester calendar. A unit of credit is a semester hour.

ELIGIBILITY FOR ENROLLMENT

Unless otherwise indicated, a student is eligible to enroll.

EXPLANATION OF COLUMN HEADINGS

HRS = Elected Hours/Units; MSH = GPA Semester Hours; CTP = Credit Toward Program; MHP = GPA Honor Points.

ABBREVIATIONS FOR CREDIT CONDITIONS

AGC = Approved for Graduate Credit; CBE = Credit by Exam; DCO = Degree Credit Only; NDC = Not for Undergraduate degree credit; NFC = Not for Credit;
NGD = Not for Graduate Degree Credit; REP = Repetition.

STUDY ABROAD

Study abroad credit is considered upper level unless otherwise noted.

LETTER GRADES

9.0 GRADING SCALE (A+ through B = Pass unless otherwise noted)
A+ = 9.0; A = 8.0; A- = 7.0; B+ = 6.0; B = 5.0; B- = 4.0; C+ = 3.0; C = 2.0; C- = 1.0; D+ = 0.0; D = 0.0; D- = 0.0; E = 0.0.

4.4 GRADING SCALE
A+ = 4.4; A = 4.0; A- = 3.7; B+ = 3.4; B = 3.0; B- = 2.7; C+ = 2.4; C = 2.0; C- = 1.7; D+ = 1.4; D = 1.0; D- = 0.7; E = 0.0.

4.3 GRADING SCALE
A+ = 4.3; A = 4.0; A- = 3.7; B+ = 3.3; B = 3.0; B- = 2.7; C+ = 2.3; C = 2.0; C- = 1.7; D+ = 1.3; D = 1.0; D- = 0.7; E = 0.0.

4.0 GRADING SCALE
A+ = 4.0; A = 4.0; A- = 3.7; B+ = 3.3; B = 3.0; B- = 2.7; C+ = 2.3; C = 2.0; C- = 1.7; D+ = 1.3; D = 1.0; D- = 0.7; E = 0.0.

ADDITIONAL GRADES

EX = EXCELLENT; GD = GOOD; PS = PASS; LP = LOW PASS; F = FAIL (EX, GD, PS and LP = Pass)
CR = Credit; NC = No credit; S = Satisfactory; U = Unsatisfactory; P = Pass; F = Fail
I = Incomplete (I OR IL followed by a letter grade indicates an initial incomplete that has been given a final grade.); NR = No grade reported;
= Grade not submitted; ED = Unofficial drop; VI = Audit or Visit; W = Withdrew from course; Y = Extended multi-term class
M = Marginal; IPL = Incomplete Permanent Lapse; NRC = No Record COVID, a non-passing grade used to address a global pandemic

COMPUTATIONS FOR TERM OR CUMULATIVE GPA: Term GPA = Term MHP/Term MSH; Cumulative GPA = Cumulative MHP/Cumulative MSH; Example: 42.0 MHP/12.0 MSH = 3.5 GPA.

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in strong support of Marisa Wright's application to serve as your law clerk. Marisa is an excellent writer, researcher, and thinker, and I believe that she would make a very strong clerk.

Over the course of the past academic year, I have worked with Marisa in two capacities. First, at the beginning of the year I hired Marisa as a research assistant, and in that role she took on several research projects on complex legal and policy questions. Second, Marisa was a student in the Democracy and Rule of Law Clinic, which I oversee as Faculty Director. In that capacity, I directly supervised Marisa's clinical work, and co-taught a weekly seminar she participated in.

As my research assistant, Marisa produced several very high-quality memos on technical issues of state law and policy surrounding election administration. Her research supported a writing project aimed mainly at non-legal audiences, which meant that I asked her to both provide a thorough and precise analysis of the relevant legal frameworks, while also distilling the broader political and policy context in which those frameworks operate. I was very impressed by Marisa's ability to toggle between those very different modes of research and analysis. In every instance, her memos were thoroughly researched and engagingly written.

In the clinic, Marisa worked on several advocacy projects designed to protect and expand voting rights. She prepared several legal research memos that were clear and well researched. She was also eager to learn and take on new kinds of projects – for example, she drafted a state public-records request, and in the course of doing that she dug into the relevant state law and thought strategically about how to most effectively draft our requests. Throughout our many discussions in the clinic, it was clear that Marisa is devoted to becoming the kind of lawyer who advances the profession's highest ideals of justice, fairness, and access.

Finally, the quality that I think really sets Marisa apart is her extensive experience as a journalist and editor. Her writing is crisp, and she produces it fast. She's very attuned to the craft of writing and thinks carefully about not only how to compose great sentences but also how to structure a piece of writing most effectively. Indeed, earlier this year when I was preparing a piece to be published in the Atlantic, I asked several research assistants who had worked on related projects to provide me with feedback on the draft. Marisa was the only one who accepted that invitation. Her feedback was insightful and reflected her deep commitment to the craft. I also appreciated her confidence in conveying significant editorial suggestions – some students may shrink from that invitation to provide feedback, but she understood that we were engaged in the common enterprise of trying to make the piece as effective as possible, and I was grateful that she took that charge seriously.

For all these reasons, I think Marisa would be an excellent law clerk. If I can provide any further information, please don't hesitate to contact me.

Sincerely,

Larry Schwartztol

Larry Schwartztol - lschwartztol@law.harvard.edu

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write to unreservedly offer my support for Marisa Wright's application to be a judicial clerk. I supervised Marisa's work in the Election Law Clinic ("Clinic") in Spring, 2023 and I taught her in the Election Law Clinical seminar ("Seminar") also in the Spring. I met weekly with Marisa while she was in the clinic, and she joined case and project team meetings also on a weekly basis. I also supervised Marisa's final paper for the Seminar. In short, I have spent many hours working with Marisa and believe she will be an excellent clerk and, eventually, lawyer. I am looking forward to having her join the Clinic as an advanced student next semester.

Marisa was part of two main teams for the Clinic—one advocacy and one litigation project. She showed a flair for each type of work both in her research and writing skills and also in her ability to work with coalition partners and clients. Marisa was able to take broad ranging questions from coalition members and produce a well-written and thorough memo summarizing the current status of a variety of election and municipal laws. Her next project was more ambitious, pulling together disparate strands of federal and state laws on a particular cause of action and ways that it could be interpreted as unconstitutional, and then to make recommendations for possible legislative language and litigation strategies based on her research. In both the straightforward and the complex task Marisa not only produced an excellent final product, but she worked efficiently and effectively—asking relevant questions or seeking advice as to whether to course correct at appropriate moments, and always being willing to edit her work.

In addition to the more theoretical legislative based work, Marisa was also part of a litigation team, and in that role she produced a memo to support an appellate brief (though, due a change in the course of the litigation, we did not end up needing to file the brief), a pre-litigation memo for the existing clients on a more novel claim, and both a draft motion on a reasonably esoteric remedial issue, and an associated memo and talking points to give to the clients to explain the motion. In some of these tasks she worked as part of a team and all the people she worked with reported that she was an excellent teammate—hardworking, thoughtful, and flexible to adapt to the preferred styles of her team members.

Marisa chose a really interesting topic for her final paper for the Seminar: removing barriers to voting for victims of domestic violence. We ask the students in their final paper to not just review an area of law but to propose something that can be done, either through litigation or legislative advocacy. Marisa chose to explain a legislative fix that could be made in a particular state to reduce barriers for DV victims. I was particularly impressed with Marisa's initial scoping to find a suitable state for her proposal and with the strategy that she laid out for her proposed changes. Her final paper was thoroughly researched, movingly written, and (characteristically) clearly structured and sign posted. The oral presentation of her paper was really powerful and she was ready with answers to tough questions and criticisms.

Though Marisa is shy and a little bashful, don't be fooled: she is focused, determined and passionate about law and justice. She is exceptionally well organized and was able to use weekly check-ins to advance our work by sending detailed agendas, and using our discussions to pinpoint areas of confusion. It was lovely to work with someone who "managed up"—it made it easier to teach her and produced better final products. And when required to speak at length—in the presentation of her final paper to the class—she excelled. My main feedback to Marisa was that she needs more confidence in her abilities! I think she will be an absolute delight to work with as a clerk and ultimately is going to make a great social justice lawyer.

I am happy to discuss Marisa and any aspect of my letter at your convenience.

Sincerely,

Ruth Greenwood
Visiting Assistant Clinical Professor and Director
Election Law Clinic at Harvard Law School
6 Everett St, Suite 4117
Tel: (617) 998-1010
Email: rgreenwood@law.harvard.edu

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to recommend Marisa Wright for a clerkship in your chambers. I have known Marisa since September of 2021, when she joined my forty-person First-Year Legal Research and Writing (LRW) section. Over the course of our full-year class, I had the opportunity to interact with Marisa both in class and in several one-on-one conferences about her written work. We also met regularly in office hours to discuss career plans, current events, and our shared interest in legal journalism (we were both student newspaper editors in college). This spring, Marisa enrolled in my upper-level elective on legal academia, "Becoming a Law Professor." As a result of these interactions, I have a good sense of Marisa's excellent research and writing skills, her commitment to justice and public engagement with the law, and her generous personality.

First, Marisa is a terrific writer. Perhaps unsurprisingly given her journalism background, Marisa innately understands the importance of audience and purpose in her writing. In the fall semester, focused on predictive memo writing, Marisa easily earned an Honors grade for her clear, clean, and well-researched memos. In the spring, focused on appellate brief-writing, she and her moot court partner came just shy of an Honors on our strict curve but nonetheless composed a strong and analytically rigorous brief (my main critique was that the brief could have stood to be a tick more persuasive, perhaps the result of Marisa's scrupulous commitment to precision in her presentation of the caselaw). In addition to her evident talent, Marisa has a strong work ethic and eagerness to improve. Each time we met about her work, she came with a bullet-pointed list of questions and suggestions of how she was going to implement my feedback. She also broadened our conversations each time with questions about how to apply the skills we were learning (including rule synthesis, analogical reasoning, and policy arguments) to legal questions she was facing in her other classes. In class, Marisa was a sought-after partner for peer editing because of her comprehensive and constructively framed feedback. Throughout her time in law school, Marisa has pursued a number of opportunities to write and edit, from her work as a free-lance copywriter, to her editing at the Harvard Civil Rights-Civil Liberties Law Review, and her work as a research assistant. All these skills—her direct writing, her dogged research, her desire to improve, and her collaborative spirit—will help her excel in chambers and provide outstanding support to you.

Outside of her writing, Marisa has prioritized public service, with a particular focus on voting rights and democratic accountability. She has worked in both our Protect Democracy and Election Law Clinics and will be interning this summer at the Voting Section of the Department of Justice. In addition to the substantive legal work she has done to fight racial gerrymandering, she has also found time to serve as a research assistant to several professors writing scholarship on a range of topics including the rule of law, judicial supremacy, and election reform. All of these efforts reflect Marisa's commitment to doing good with her legal education; we have talked frequently about how important it is for the public to feel able to understand and avail themselves of their legal rights, and she has chosen opportunities where her skills will allow her to further those goals. In my course on legal academia this spring, which featured a number of guest speakers from different law schools sharing their approaches to scholarship and teaching, Marisa was a hugely helpful interlocutor, always pushing our speakers to reflect on how their work advanced democratic goals and made law accessible both to their students and to the broader society. Of course, different speakers had a range of perspectives on these questions, but Marisa's thoughtful inquiries helped frame our dialogue throughout the semester. Though I expect Marisa first to be an effective litigator in government or nonprofit impact litigation, I also hope that she will find time and opportunities to teach and write scholarship. Hers is a voice we should hear.

Finally, Marisa is, simply, someone you would like to know and with whom you would like to work. She is friendly, thoughtful, and wryly funny. A first-generation college and law student, Marisa has gone out of her way to mentor others who are new to higher education, including current and prospective law students. In addition to her own myriad obligations, Marisa has also provided loving care and support to her mother this year as she has undergone a cancer diagnosis and treatment. I mention this latter point in particular because I don't think I would have known what was going on but for Marisa's professionalism. I sent her an email with a question that was not at all time-sensitive and received an auto-reply explaining that she was away from school for a few days dealing with a family matter and would be slow to reply. When she returned to school, I followed up to ask if things were okay. She calmly shared what has been a harrowing medical journey and then we discussed how she would proceed with balancing her mother's care and her own work. At many points this year, Marisa has flown home to care for her mother or attended appointments telephonically to manage the doctors. How she has done that while maintaining a rigorous courseload, clinical commitments, and work for many professors is quite simply beyond me. But I think it shows that she has the right priorities alongside a simply phenomenal work ethic. More than that, she also has balance in her life. She never shows up to class without a (non-legal) book in her hand (she has given me a number of excellent recommendations), and she follows Michigan sports with the zealotry of an alum and true fan (she has told me her first time at a Michigan football game was when she was only a week old!).

In short, Marisa is a sure bet to be an excellent law clerk. Please don't hesitate to contact me if I can provide additional information about this wonderful candidate. You can reach me by phone at (617) 496-3673 or via email at stobin@law.harvard.edu.

Sincerely,

Susannah Barton Tobin - stobin@law.harvard.edu - 617-496-3673

Susannah Barton Tobin
Managing Director, Climenko Program
Assistant Dean for Academic Career Advising

Susannah Barton Tobin - stobin@law.harvard.edu - 617-496-3673

WRITING SAMPLE

Drafted November 2022

Used with permission from the Harvard Law School Democracy and Rule of Law Clinic

This research memo was drafted to identify the best arguments for and against the contention that the NVRA's 90-day quiet period provision applies to removing names from a state's list of eligible voters based on mass challenges made by private individuals. It has not been edited by another individual.

Marisa Wright
24 Chauncy St. Cambridge, MA 02138 | 219.779.1487 | mwright@jd24.law.harvard.edu

To: Protect Democracy
From: Marisa Wright
Date: November 14, 2022
Re: NVRA's 90-Day Quiet Period Provision

This memo explores whether the 90-day quiet period provision in the National Voter Registration Act of 1993 (NVRA) prohibits states from removing names from the state's list of eligible voters as a result of mass challenges initiated by private actors. This research was done in the context of states receiving large numbers of challenges leading up to the 2022 midterm elections, especially in Texas and Georgia. At this time, there is concern that challenges could escalate in the days and weeks leading up to election day, potentially disenfranchising many voters. Even if that activity does not occur, the possibility of escalating challenge programs remains for the 2024 elections.

There is a plausible argument that, under certain circumstances, the quiet period would apply to such challenges, but that conclusion is not unassailable. This memo first sets out the arguments in favor of the view that the quiet period applies to such challenges, and then considers counterarguments that might lead an election official or court to the contrary view.

I. NVRA's 90-Day Quiet Period Provision

The NVRA requires that "[a] State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters." 52 U.S.C. § 20507(c)(2)(A).

A limiting provision immediately follows the 90-day quiet period provision; it states that the provision "shall not be construed to preclude—(i) the removal of names from official lists of

Marisa Wright
24 Chauncy St. Cambridge, MA 02138 | 219.779.1487 | mwright@jd24.law.harvard.edu

voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a) of this section; or (ii) correction of registration records pursuant to this subchapter." *Id.* § 20507(c)(2)(B). This limiting provision references the General Removal Provision, which states that registered voters may not be removed from the voter rolls except:

> (3)(A) at the request of the registrant; (B) as provided by State law, by reason of criminal conviction or mental incapacity...
>
> (4)(A) the death of the registrant...

Id. §§ 20507(a)(3)(A), 20507(a)(3)(B), 20507(a)(4)(A).

II. Arguments Supporting Applying the Quiet Period to Mass Challenges

A. Text of the NVRA

Removals made within 90 days of an election that resulted from challenges have been held to violate the NVRA's 90-day quiet period provision. In *N. Carolina State Conf. of NAACP v. Bipartisan Bd. of Elections & Ethics Enf't*, No. 1:16CV1274, 2018 WL 3748172, at *1 (M.D.N.C. Aug. 7, 2018), a group of voters challenged removals made by boards of elections in three North Carolina counties—Beaufort, Moore, and Cumberland—that occurred within 90 days of an election and were the result of "en masse challenges to voter registrations on change-of-residency grounds." The U.S. District Court for the Middle District of North Carolina found that the counties' removal of voters from the state's voter list within 90 days of an election based on challenges "constitute[d] a 'program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.'" *Id.* at *5. Further, the

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court found that the counties did not sufficiently engage in individualized inquiries to determine the eligibility of the registered voters. *Id.* Even where the court found that "the Moore County Board made an effort[1] to gather individualized information[2] about each challenged voter to the extent possible before sustaining each challenge," it found that the effort "occurred too late in the process to provide the safeguards against disenfranchising voters that Congress intended in enacting the NVRA." *Id.* at *9. The district court then granted partial summary judgment for the plaintiffs on this claim. This case makes the strongest argument that the quiet period applies to challenges. The facts of this case are almost directly, if not directly, on point for the concerns prompting this memo.[3] How the county boards of elections responded to challenges before removing names from the voter list played a role in the court's analysis here, so the applicability of this case may depend on the state's response to challenges if such a situation arises. Still, the court used a relatively heightened standard for what counts as an "individualized" inquiry during

[1] The court's description of the Moore County Board's effort to gather individualized information:

> Before holding preliminary hearings, the Moore County Board of Elections and its staff "conducted research on the challenged voters in an attempt to find updated residency information." Based on this research, 99 of these challenges were resolved and dismissed. Nevertheless, for the 374 individuals whose voter registrations were ultimately canceled, the single postcard returned as undeliverable served as prima facie evidence sufficient to justify the cancellation of their voter registrations. The Court concludes that the cancellation of these 374 voters' registrations lacked the individualized inquiry necessary to survive the NVRA's prohibition on systematic removals within 90 days of a federal general election.

NAACP, 2018 WL at *9.

[2] The individualized information/inquiry requirement is further laid out in *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1344–45 (11th Cir. 2014). S*upra* Section III.B.

[3] 3 *See also* Michael Hardy, *Harris County May Have Violated Federal Election Law, Expert Says*, Texas Monthly (Aug. 24, 2018), https://www.texasmonthly.com/news-politics/harris-county-may-violated-federal-election-law-expert-says/ (David Becker, a former attorney for the Department of Justice's Civil Rights Division and the Executive Director and Founder of the Center for Election Innovation & Research, argues that state action taken based on challenges violates the NVRA's 90-day quiet period provision).

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the 90-day quiet period. Thus, this case supports the Protective View of the NVRA's 90-day quiet period provision.

The Department of Justice's guidance about the NVRA's 90-day quiet period provision may support the Protective View because challenges may fall within prohibited "verification activities." The Department's website includes the following guidance:

> Section 8 requires States to complete any program the purpose of which is to systematically remove the names of ineligible voters from the official list of eligible voters not later than 90 days prior to the date of a primary election or general election for federal office. *This 90 day deadline applies to state list maintenance verification activities such as general mailings and door to door canvasses*. This 90 day deadline does not, however, preclude removal of names at the request of the registrant, removal due to death of the registrant, removal due to criminal conviction or mental incapacity of the registrant as provided by State law, nor does the deadline preclude correction of a registrant's information.

The National Voter Registration Act of 1993 (NVRA), The United States Department of Justice, https://www.justice.gov/crt/national-voter-registration-act-1993-nvra (last visited Oct. 23, 2022) (emphasis added). It is possible that challenges can be considered "verification activities," especially those submitted based on door-to-door canvases, that fit within the Department's guidance about what is not allowed during the 90-day quiet period. The way this guidance is written makes it unclear whether the 90-day provision's deadline for "state list maintenance verification activities such as general mailings and door to door canvasses" applies to only state-initiated activities or to other actors as well ("state" here might be modifying "list," in which case, it seems possible that it does not mean only state-initiated activities, for instance). If one takes the broader view of this statement, it is conceivable that challenges fit within the "verification activities" that must be completed 90 days before an election. Thus, the